SENATE—*Monday, February 22, 1993*

(Legislative day of Tuesday, January 5, 1993)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable JOSEPH I. LIEBERMAN, a Senator from the State of Connecticut.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC., February 22, 1993.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOSEPH I. LIEBERMAN, a Senator from the State of Connecticut, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. LIEBERMAN thereupon assumed the chair as Acting President pro tempore.

RECESS UNTIL 10 A.M., WEDNESDAY, FEBRUARY 24, 1993

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate now stands in recess until 10 o'clock a.m., on Wednesday, February 24, 1993.

Thereupon, at 10 o'clock and 24 seconds a.m., the Senate recessed, under the order of Thursday, February 18, 1993, until Wednesday, February 24, 1993, at 10 a.m.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

HOUSE OF REPRESENTATIVES—*Monday, February 22, 1993*

The House met at noon and was called to order by the Speaker pro tempore [Mr. BONIOR].

DESIGNATION OF SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
February 19, 1993.

I hereby designate the Honorable DAVID E. BONIOR to act as Speaker pro tempore on Monday, February 22, 1993.

THOMAS S. FOLEY,
Speaker of the House of Representatives.

PRAYER

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

As we seek to live our lives in dignity we offer our thanks, Almighty God, for the gifts of remembrance and tradition and the heritage of our faith. We are grateful that we have had the instruction of parents and colleagues, of friends and teachers, who have shared wisdom from their time and place. As we remember what we have been given and as we celebrate our legacy of ideas and our birthright of spiritual values, may our hearts be full of thanksgiving and our attitudes full of grace. In Your name, we pray. Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Mississippi [Mr. MONTGOMERY] please lead the House in the Pledge of Allegiance.

Mr. MONTGOMERY led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair desires to announce that pursuant to clause 4 of rule I, the Speaker signed the following enrolled joint resolution on Thursday, February 18, 1993:

H.J. Res. 101. Joint resolution to designate February 21 through February 27, 1993, as "National FFA Organization Awareness Week."

COMMUNICATION FROM CHAIRMAN OF COMMITTEE ON STANDARDS OF OFFICIAL CONDUCT

The SPEAKER pro tempore laid before the House the following communication from the chairman of the Committee on Standards of Official Conduct:

COMMITTEE ON STANDARDS OF
OFFICIAL CONDUCT,
Washington, DC, February 17, 1993.

Hon. THOMAS S. FOLEY,
Speaker, House of Representatives, Washington, DC.

DEAR MR. SPEAKER: This is to inform you pursuant to rule L (50) of the rules of the House that the Committee on Standards of Official Conduct has been served with a subpoena issued by the U.S. District Court for the District of Massachusetts.

Sincerely,

JIM MCDERMOTT,
Chairman.

JUDGE DAVID L. BAZELON

(Mr. EDWARDS of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks and to include extraneous material.)

Mr. EDWARDS of California. Mr. Speaker, last Friday here in Washington, the Nation lost one of its greatest judges, David L. Bazelon, who passed on after a long illness.

For more than three decades Judge Bazelon was the Nation's leader in insisting that our criminal laws be enforced in accordance with the Constitution's intentions, with every defendant guaranteed his or her rights to a really fair trial.

Judge Bazelon rendered many history making decisions, each of which brought our society closer to civility and fairness. He emphasized that the root causes of crime were inadequate housing, education, and job opportunities, and that removing these hurdles was essential.

Mr. Speaker, on behalf of all of Judge Bazelon's many friends and admirers in Congress, I send our condolences to Mickey Bazelon, Judge Bazelon's widow, to his sons, James and Richard, and to all the members of his loving family.

Mr. Speaker, I insert in the RECORD today's Washington Post's editorial and Sunday's New York Times' obituary written by Marilyn Berger.

I also include the eloquent remarks of Chief Judge Abner J. Mikva and those of Judge Patricia Wald, both of the U.S. Court of Appeals for the District of Columbia Circuit, delivered at Judge Bazelon's funeral yesterday.

[From the Washington Post, Feb. 22, 1993]

DAVID L. BAZELON

Friday two of the most famous and revered members of the federal judiciary here died. David Bazelon was the youngest man ever to sit on a federal appellate bench when he was appointed to the U.S. Court of Appeals here in 1949. Judge Bazelon, who was 83 years old when he died, had grown up poor in Chicago and struggled to put himself through college and law school. In his career as a lawyer and judge, he demonstrated special concern for those who came from backgrounds of deprivation and, for whatever reason, had not succeeded as he had. Throughout his career he argued that the absence of adequate housing, education and job opportunities was the root causes of crime and that changing these factors was the crucial step in reducing criminal conduct.

A federal prosecutor, private practitioner and head of the Justice Department's Lands Division before he went on the bench, Judge Bazelon was fascinated by the psychological and social aspects of the legal matters that came before him. He wrote extensively and had a national reputation as an innovative thinker, constantly urging his colleagues to consider disciplines outside the law and incorporate what was useful and progressive into their decision making. He was perhaps best known—and in time most controversial—because of his rulings in the area of mental illness and criminal responsibility. As a member of what most lawyers consider to be the second most important court in the country, and as its chief judge for 16 years, he also won a reputation as an authority on government regulation and a champion of civil rights and civil liberties.

Judge Bazelon was a national figure who was also an important and influential member of this community. He was as interested in bettering local schools as he was in federal legislation and psychiatric theory. His brilliant career was cut short by Alzheimer's disease, and his retirement seven years ago deprived the court and this city of his influence and his intellect. His writings, his innovative approach to the law and his example of service and scholarship endure.

[From the New York Times, Feb. 21, 1993]

D.L. BAZELON, 83, DIES; POWERFUL JURIST

(By Marilyn Berger)

David L. Bazelon, who as a Federal appeals court judge for three decades wrote landmark opinions extending the rights of the individual and expanding the rights of criminal defendants, died on Friday at his home in Washington. He was 83.

Judge Bazelon stepped down from the United States Court of Appeals for the District of Columbia in 1985, saying he was having prob-

lems with his memory. In his last years, he suffered from what was believed to be Alzhemier's and Parkinson's diseases, his family said.

As Chief Judge of the appeals court from 1962 to 1978, Judge Bazelon presided as the court was breaking ground in criminal law and on issues as diverse as Presidential power and nuclear power, broadcasting and the use of the powerful insecticide DDT.

His court's broad reach resulted from its jurisdiction over Federal regulatory agencies and its role as the appellate court for the nation's capital. As the Federal Government grew, so did the influence of Judge Bazelon's court. Next to the Surpreme Court, his was considered the most influential court in the country. As its Chief Judge, he was one of the most influential jurists in the land. He was also the focus of sharp debate among admirers and detractors.

PURSUIT OF FAIRNESS

In a career spanning eight Presidential administrations, Judge Bazelon (pronounced BAA-zeh-lawn) became a familiar figure in Washington society, a welcome guest with a warm sense of humor, who stayed trim by jogging regularly.

He was a handsome, white-haired man, given to peering down from the bench over his half-glasses, often to ask a penetrating question. Rather than follow precedent set in a simpler time, he questioned the status quo and sought to apply new findings in the social sciences and psychiatry to issues the court faced.

In an interview as he stepped down as Chief Judge, he said: "In this job, you have to ask the questions that tend toward greater fairness. Without the right questions, you'll never get the facts that will lead you to better answers."

Judge Bazelon, who believed that the judiciary should reach beyond the bench and speak out on social issues, was assailed by conservatives as being soft on crime and by some legal scholars for bringing the judiciary into the regulatory process.

There was a spirited and bitter antagonism between Judge Bazelon and Chief Justice Warren E. Burger, who had served with him on the appellate court.

"JUDICIAL INTERVENTION RUN RIOT"

In a scathing Supreme Court opinion in 1978, Justice William H. Rehnquist, reflecting the views of the Burger Court, accused the Bazelon court of "judicial intervention run riot." In the 7-to-0 opinion, with two Justices not voting, the Supreme Court overturned a decision by Judge Bazelon's court to block the operation of nuclear reactors at the Vermont Yankee power plant. The lower court took the action even though the Nuclear Regulatory Commission had issued an operating license for the plant.

The Justices declared that the lower court, which had based its decision mainly on environmental grounds, had no business imposing its own "notion of which procedures are best or most likely to further some vague, undefined public good."

But Judge Bazelon was a heroic figure to many liberals. Joseph L. Rauh Jr., the Washington lawyer who served as a clerk to Justices Benjamin Cardozo and Felix Frankfurter, wrote to Judge Bazelon in 1979, "I have worked for great judges and have known many more great judges, but I believe you have had the most socially useful judicial career in my lifetime."

Former Justice William J. Brennan, Jr. of the Supreme Court, long a close friend of Judge Bazelon, said his major contribution was in extending the Bill of Rights to restrict state power. Justice Brennan said in an interview in 1989 that Judge Bazelon was particularly instrumental in expanding the right of defendants in criminal cases to be represented in court and in extending to the states, through a series of rulings during his years on the appellate court, the right to prohibit evidence that was improperly acquired.

It was not enough, in Judge Bazelon's view for a defendant to have legal representation. He believed that the Constitution required the court to look at the quality of that representation. When he saw a lawyer who did not put enough effort into a case, he would often point at the lawyer and say, "There goes a walking violation of the Sixth Amendment."

REDEFINING CRIMINAL INSANITY

In 1954, applying modern psychiatric theories, Judge Bazelon established a new definition of insanity as a defense in criminal cases. Previously, for almost a century, the test was whether the defendant knew right from wrong. Judge Bazelon wrote in his decision in Durham v. United States that "an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect."

In 1972 Judge Bazelon concurred in his three-judge court's decision to establish a more restrictive test, but his opinion in the Durham case generated new consideration of the insanity rule.

Much of his activity on and off the bench was aimed at removing the causes of criminal behavior, making prisons less brutal and assuring greater fairness in sentencing. He vigorously opposed mandated prison sentences that did not give a judge flexibility to set the term. He also urged that society deal with injustices that he believed bred crime: poverty, broken families, racial discrimination and lack of educational opportunity.

In an article in The New York Times in 1977, Judge Bazelon wrote: "It is always easy to concede the inevitability of social injustice and find the serenity to accept it. The far harder task is to feel its intolerability and seek the strength to change it."

COMPASSION FOR UNDERDOG

As the youngest of nine children, David Lionel Bazelon once said he came by his feelings for the underdog almost as a birthright. He was born in Superior, Wis., on Sept. 3, 1909, to Israel and Lena Bazelon. His father, who ran a general store, died when David was 2 years old.

The family, virtually penniless, moved to Chicago, where the future judge attended public schools. He attended the University of Illinois but transferred to Northwestern University, graduating in 1931 with a law degree. All the while he worked as a store clerk or movie usher to pay his way.

He entered private law practice in Chicago and became active in Democratic politics. In 1935 he was appointed an assistant United States attorney for the Northern District of Illinois.

In 1936 he married Miriam M. Kellner. Besides his wife, his survivors include two sons, Richard of Philadelphia and James of San Diego; a brother, Gordon of Palm Springs, Calif.; a sister, Anne Safer of Milwaukee, and four granddaughters.

CALLED UPON BY TRUMAN

In 1940, he returned to private practice. But six years later he went back into Government service after President Harry S. Truman named him an assistant Attorney General. He was put in charge of the lands division of the Justice Department. In 1947 he became administrator of the Justice Department's Office of Alien Property.

J. Edgar Hoover, Director of the Federal Bureau of Investigation, was an early friend and patron, despite differences in political views. It was Hoover who urged Mr. Bazelon to take the job in the Justice Department and who supported him for the judiciary.

In 1949, Mr. Bazelon was named to the appeals court in Washington, becoming the youngest judge in the court's history. He became Chief Judge in 1962 and was the leader of the court's liberal majority before he stepped down in 1978. In 1979 he accepted senior status on the court and continued to hear occasional cases and write opinions until 1985.

Judge Bazelon wrote a series of opinions affecting the major issues of his time, from McCarthyism to the Watergate scandals. In the early 1950's, when Senator Joseph R. McCarthy of Wisconsin held his highly publicized hearings on supposed Communist influence in government, Judge Bazelon upheld the rights of individuals to refuse to answer Congressional committees' questions that were not shown to be pertinent to the authorized inquiry.

In October 1973, he ruled that President Richard M. Nixon was required to hand over certain tape recordings sought by the Watergate grand jury and that claims of executive privilege were invalid. Three years later, he supported the dissemination and sale of recordings of Presidential tapes that were used as evidence in the Watergate trials. The possible embarrassment of Mr. Nixon, he wrote, "is largely that which results whenever misconduct or questionable conduct is exposed."

OTHER MAJOR DECISIONS

Among his other opinions were these:

A 1963 reversal of the conviction of the Communist Party for failing to register under the Internal Security Act. He wrote that under the Fifth Amendment, no one can be forced to declare an association with a party that has been labeled criminal.

A 1966 ruling that patients in public mental institutions were entitled to treatment. He wrote that "indefinite confinement without treatment may be so inhumane as to be 'cruel and unusual punishment.'"

A 1971 order directing the Environmental Protection Agency to cancel all uses of DDT.

A 1977 ruling barring newspapers from owning radio or television stations in the same city.

A 1979 finding in which he overturned a year-old order that prevented an anti-war group from making public information about spying by the Central Intelligence Agency.

Judge Bazelon watched America become a litigious society and he welcomed it.

"For nearly 200 years of this nation's history, few blacks, Hispanics or Asian-Americans, to name only a few of the victims of oppression, would have thought of taking their claims to court," he said in 1983. "If the so-called litigation crisis is due in any significant part to the increase in social expectations of the disadvantaged and to society's growing sensitivity to these issues, then in my opinion the increase in litigation is a healthy one."

EULOGY FOR DAVID L. BAZELON

(By Abner J. Mikva, Washington Hebrew Congregation, February 21, 1993)

When I was appointed to the United States Court of Appeals for the District of Columbia Circuit in 1979, the Court was known as Bazelon's Court. It had been known as such

for many, many years before that. It is still known as such in many, many circles. It was not just that he had served as a judge of that Court for almost 40 years, and as its chief judge for almost 16 years. It was Bazelon's court because he made it into his powerful forum for challenging the inadequate status quo. He refused to accept the notion that in a country that had become a pioneer in psychiatric medicine, we should continue to apply a century-old definition of legal insanity that did not make sense even when it was first adopted. He could not understand how our legal system, that was the envy of the world, remained inaccessible to so many poor people who needed to use it. He could not understand why judges were so chary in applying those noble guarantees of freedom inscribed in our Constitution's Bill of Rights. Some judges squirmed at being described as controversial. Not David Bazelon. He could not understand why judges should aspire to be anything else. Judges were supposed to distribute justice. By definition, that is controversial. You did not do that lying down with one arm tied behind your back. You did not do that seeking to win popularity contests with prosecutors or the Congress, or even your colleagues. He chafed at some of the jurisprudential doctrines, like standing and ripeness and abstention which were often used to slow him down in his pursuit of justice. He was a passionate judge about those freedoms and rights, and he was prepared to joust with anybody who resisted their application—academics, colleagues, the Supreme Court, Congress. And because he cared so deeply, he won many more of those jousts than he lost.

Bazelon's Court. He beamed when I told him the story of a mutual Chicago friend who asked about me. When I told him that I was a judge on the Court of Appeals in Washington, the friend replied, "That's Bazelon's Court. What do you do?" David liked the story because it did not embarrass him at all to be perceived as a strong and forceful judge. He could not understand why anybody would want to be a judge, have the forum that he had, and not use it to promote and distribute justice. He used his opinions, his speeches, his legal articles, his magazine pieces. He expected to be a role model to his clerks and others whose lives he touched, and he took it seriously—to make sure that they too were imbued with a mission for justice. That's wrong. David Bazelon didn't touch lives; he impacted them. Nobody could come away from an encounter with Judge Bazelon, friendly or otherwise, and not know that they had met a man determined to make a difference. To this day, some of my more senior colleagues come up to me after judges' meetings and say "The meeting would have been a lot shorter if Bazelon were still Chief Judge." At a conference with some Russian judges a few years ago, I was impressed with this very forceful Russian judge, who seemed to speak only Russian—and often. During a recess, he came up to me and asked—in English—"You know Bazelon? He strong judge."

One of the greatest friendships that I ever have observed is the one between Justice William Brennan, who is here today, and David Bazelon. I use the present tense because that friendship will never die. Their dialogues will live on in the minds of all who were privy to them. Who better, then, to quote about Judge Bazelon's restless intellect than Justice Brennan. I quote from an introduction that the Justice wrote to Justice Bazelon's book: "He never refuses to ask a question merely because it has never been asked. Nor does he shy away from proposing an answer merely because it has never been proposed. David L. Bazelon is among the great judges in American history." Justice Brennan, I have always followed your opinions.

We lowered the flag to half-mast at Bazelon's Court yesterday. It was to honor the memory of David Bazelon. But it was also a signal to the rest of us that a giant of a judge had passed among us, and that his match will not soon be found. Tzedek, Tzedek, Tirdof, it is written in Deuteronomy, (Chapter 16, Verse 20)—Justice, Justice shall you pursue. David Bazelon, no one pursued it better.

REMARKS AT MEMORIAL SERVICE FOR JUDGE DAVID BAZELON BY JUDGE PATRICIA WALD, FEBRUARY 21, 1993

David Bazelon played a larger than life role in the lives he touched. I first met him in the early 1960s when I was struggling to reenter the legal world I had left 10 years earlier. Because of our shared interest in children—especially those from society's sorry underside—we came together often. I found myself a member of a network of what I suppose the press today would call "FODs" (Friends of Dave) that David—sometimes outrageously, sometimes coquettishly—would call on for assistance with his outpouring of speeches and articles—a coterie that transcended race, gender, age, religion and not infrequently, familiarity with the subject at hand.

It is part of David's lore that he was a hard taskmaster with his clerks, but he was also forever generous in his patronage; he made sure there was room at his table for women and little-knowns like myself; for irreverent young Turks and for anyone spunky enough to shake up the status quo. His sponsorship opened professional doors for us. He encouraged us to take on social/legal problems that in that optimistic time we were sure could be solved with imagination and energy and dedication and good will. He became our good friend * * * he and Mickey who over time would nourish and sustain him with her immense strength and devotion.

David was a warrior, not always easy in manner or mein, a kind of George Patton of the bench, never at rest, prodding everyone around him to keep it up, to fight and to fight back. But he was also a schmoozer who loved and was fiercely loyal to his friends, who revelled in the conviviality of his clerk reunions and the camaraderie at Milton Kronheim's Warehouse where he shared the day's lunch special with Bill Brennan, Barrington Parker, Ab Mikva and an unlikely assortment of Senators, Congressmen, newspaper reporters, academics, law clerks and just plain folks he liked.

David knew that the law must evolve to survive. That meant difficult issues squarely faced—by judges when no one else would—the contours of the insanity defense, the rights of the criminally accused, the duties of appointed defense counsel, the plight of uncounselled juveniles, the dilemma of institutionalized mental patients denied treatment. David was a proudly activist judge, not in the least reticent to raise those issues, no matter the discomfort they produced for colleagues within and bureaucrats without. Many of the stunning advances in the legal rights and access to the courts for disadvantaged groups had their origins in David's opinions in cases that are now as familiar to first year law students as Blackstone's and Story's treatises. He did more—he sent beacons of light to soulmates in other circuits—to the Charlie Wyzanskis, Frank Johnsons, Wayne Justices, and George Edwards' whom he invited to sit on our circuit bench. For young D.C. lawyers like myself, that was a Golden Age and the D.C. Circuit a constellation of superstars.

But action produces reaction and predictably when the law becomes a battleground for ideals, the attacking vanguard is often repelled. Change in the courts is uneven, often ragged, and settles, only to become unsettled again. And so David suffered losses as well as wins; the 1970 Court Reorganization Act removed the court's jurisdiction over local crimes, juvenile matters, and most of the poverty and mental health law which he had dominated. Indeed, it is an interesting historical question whether that separation of local and federal courts in D.C. would have been launched from the Nixon Justice Department if the Bazelon court had not provoked it to reaction.

On his own court, David fought the good but not always victorious fight. His ever-controversial *Durham* opinion in 1954 establishing the rule that a defendant was not criminally responsible for acts that were the product of a mental disease or defect was abandoned 18 years later in favor of a modified test focusing on the defendant's capacity to appreciate the wrongfulness of his conduct and to conform to the law. He retreated with grace: though he still believed that *Durham* had been, in his words, "designed to throw open the windows of the defense and ventilate a musty doctrine with all of the information acquired during a century's study of the intricacies of human behavior," he joined the majority in adopting its replacement.

When the circuit shifted sharply in the 1970s from crime and poverty to the arcane realms of administrative law, David became an important player in a different game. Yet to him, the stakes were much the same: keeping, as he said, "the big guys in charge honest," insuring that they did not get away with glib jargon, and deferential bows to professed expertise. With the emergence of the public interest bar, there came new environmental challenges, consumer actions, novel demands for judicial intervention and relief. Congress passed a surge of complex regulatory laws on clean air and water, energy efficiency standards, hazardous and nuclear waste disposal, and to fill the vacuum left by the loss of local jurisdiction, gave our circuit primary responsibilities for reviewing their enforcement by a myriad of agencies. David worried that the administrators would not make careful or searching enough inquiries into all the relevant evidence, that they would continue slipshod old ways and let the real decisions be made in the agency corridors between the regulators and the lobbyists, that they would operate in the shadows obscuring why they did what they did. So he demanded rigorous procedures for agency recordkeeping, for examining data and expert witnesses, for requiring that the agencies justify their decisions in terms of evidence and rational analysis. Ironically for a judge who had probed so deeply into the mysteries of psychiatry in order to demystify its hold over judges, he now counselled "technically illiterate" judges to stay out of the scientific depths, stating in one dissent:

"Socrates said that wisdom is the recognition of how much one does not know. I may be wise if that is wisdom, because I recognize that I do not know enough about dynamometer extrapolations, deterioration factor adjustments, and the like to decide whether or

not the government's approach to these matters was * * * valid."

But he did know enough to contribute mightily to the reformation of administrative law led by the D.C. Circuit in the seventies and into the eighties, fleshing out the requirements of scores of laws governing the quality of the air we breathe, the water we drink, the ground our children play on, the drugs we take, and the vehicles we drive.

He was to the last up for a fight—win or lose—I still remember his good nature about that. He wryly admitted that in his heyday, perhaps he had—sometimes—been as cocksure, even arrogant, as they were today. I would like to think that somehow in these last few months he sensed that the pendulum had swung again.

Forty years on the court was too short to accomplish the transformation of American justice David Bazelon envisioned. But he started down the road and an army followed. At times the terrain was rough and the ranks thinned, but his journey never faltered.

And, today there may be a generation of fresh recruits ready to take up the march—women, disadvantaged minorities, defenders of abused children, alcoholics and addicts, the homeless, advocates for the mentally ill, victims of overzealous prosecutors, environmentalists, consumers, honorable public officials, the idealistic young—the great array of people and causes David Bazelon's law embraced.

They, and we, salute you, David, and will not forget you.

COUNTRY NEEDS STRONG DOSE OF BILATERAL CREDIBILITY

(Mr. THOMAS of Wyoming asked and was given permission to address the House for 1 minute.)

Mr. THOMAS of Wyoming. Mr. Speaker, the President and his advisers as well as Members of Congress need to come to recognize the time for campaigning is over. The time for flowery statements about our problems and little specifics on solutions has passed. Some are willing to forgive broken promises from the campaign and accept the overstatements and hyperbole—but this is a time very different from a campaign. Now is the time to govern.

The President cannot expect the Congress to accept his plan on faith alone—there is no basis for him to expect us to accept "trust me." There are tons of reasons for lack of trust—a $150 billion overstatement on the amount of spending reductions, continuing self-congratulations on reducing the cost of the White House with no evidence of real cuts—scoring tax hikes in Social Security as cuts, or hikes in the grazing fee as cuts. This is not the kind of performance which generates enough credibility for us to take his plan on faith.

Certainly the effort to suggest that it is the President's plan or nothing is a hollow threat. There are all kinds of alternative approaches—one might even be so radical as to suggest no new spending or at least more spending cuts. We will be specific and from my perspective it will be a test of the President's credibility to act on these specific cuts. Mr. Speaker, the only way to make some changes to strengthen this country is to be honest with the Congress and the people and with ourselves—what is most needed to move forward is a good strong dose of bilateral credibility.

LET'S GIVE THE PRESIDENT THE CAMPAIGN FINANCE REFORM BILL HE HAS REQUESTED

(Mr. MAZZOLI asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MAZZOLI. Mr. Speaker, there was much to applaud last Wednesday when the President of the United States stood at that podium and gave us the State of the Union.

One aspect which I very much applauded was his saying that he would sign the Brady bill when it reached his desk, and this afternoon many of us will refile that bill.

I was also extremely pleased to hear the President talk favorably about campaign finance reform, and in fact say that we, the Congress, should pass that bill this year. There are many reasons that we should support drastic campaign finance reform. Among them is that $500 million, one-half of a billion dollars, was spent during the 1992 campaign cycle for congressional seats on both sides of the Capitol. That is $100 million more than in the 1990 cycle. That kind of spending is obscene and cannot continue.

Second, this year's entering class of 110 Members is probably the most talented class that ever has entered this body. It is sad to report that 95 of the 110 entered Congress in debt, which means that they have to step upon that treadmill of raising money to prepare for the next campaign and pay off the old campaign debt—that is not the way things ought to be.

Last but not least, Mr. Speaker, there is another great need to have campaign finance reform. As the President said from that podium, we must scale the walls of the people's skepticism. He says we the people are skeptical, and he is correct, the people are skeptical about his plan, and all plans, and we have to prove to them that we are going to do the people's business. One way to make that scaling of skepticisn possible is to pass substantial campaign finance reform.

A SALUTE TO THE LONG BEACH NAVAL SHIPYARD ON ITS 50TH ANNIVERSARY

(Mr. HORN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. HORN. Mr. Speaker, I rise today to salute the Long Beach Naval Shipyard on its 50th anniversary. This proud shipyard, the employer of over 4,000 men and women, began its service to this Nation in 1943 as part of America's effort to stop the forces of fascism and repression in the Second World War. We still have one of the world's largest floating cranes, affectionately known as Herman the German, to remind us of that time. The Long Beach Naval Shipyard has stood as a keystone of the Navy and our commitment to democracy ever since, through Korea and Vietnam and a host of lesser conflicts. The shipyard now serves in a time of what we hope will prove to be peace.

The shipyard is an integral part of the greater Long Beach and South Bay community. Its workers, the lifeblood of any institution, but especially this one, live in parts of five different counties. They represent nearly every race, ethnicity, background, and conviction there is—truly a melting pot of America. The one word that should be used to describe these thousands of men and women is quality. We have a reservoir of skills and crafts unmatched at any other location. And as the Navy's 1991 Meritorious Unit Commendation Award recognizes, the Long Beach Naval Shipyard is the best at putting those skills to use. Long Beach is the most cost-effective and efficient naval shipyard in the Nation, bar none—a claim that improves each and every year. Each time I have had the opportunity to visit the shipyard, I have walked away with one overriding impression—that of commitment and dedication, those very principles that so many claim America has lost. Mr. Speaker, if the criers of decline need a lesson in reality—the reality of American greatness, all they need to do is to take a tour of the various shops and buildings of the Long Beach yard. I did that again this last weekend during Family Day on February 20. This facility was 50 years old last week, but the shipyard's great achievement is the enduring tradition of fine workmanship, high productivity, and low cost, year after year. It is a true tradition of national service.

The shipyard was built on land willingly given to the Navy by the city of Long Beach. And while a half century, and much ebb and flow in the Nation's defense effort, have intervened since that time, the shipyard's efforts to provide the Navy the best workers and workmanship have never abated. I know that I speak for the city of Long Beach when I say that we want the shipyard to continue its proud tradition of service to the Nation.

While a 50th anniversary should be an exclusively happy occasion, Long Beach and the surrounding counties and cities know that we face difficult times and a troubled future. The threat of closure can never be far away from our thoughts as we await March 15 and

the Secretary of Defense's recommendations of bases for possible closure. This is a threat that we have faced before, but maybe never so seriously. We are a community which cherishes a time of peace as much as any other. And we have faith that we will see through this time as we have seen through others.

Hopefully, this shipyard and its skilled workforce will still be here ready to serve. When our Nation is no longer spending $1.5 billion on ship repairs in Japan which it has been doing for the last 4 years.

So today, Mr. Speaker, I focus not on any worry, but only on the positive. I salute this great shipyard. I salute the men and women, their employee associations, their unions, and their management: All those who have worked together to make it such a vibrant, productive, and vital installation in our Nation's defense.

□ 1210

INTRODUCTION OF THE BRADY BILL

(Mr. SCHUMER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SCHUMER. Mr. Speaker, last week President Clinton opened the door. He said pass the Brady bill and I will sign it. We here in Congress will take up that challenge when I, along with 98 cosponsors, introduce this bill, the Brady bill, today.

At last we have a partner in the White House who is ready to work with us on arms control, arms control here at home. It is just as important to disarm the gun-toting criminals on our streets, as it is to disarm the gun-toting criminals on the streets of Mogadishu.

America has been waiting 6 years for us to pass Brady. While we bickered over its merits. While we gave in to political pressure tactics from the NRA. While we did nothing for the past 6 years, since Brady was first introduced, nearly 50,000 Americans have been murdered with a handgun. We cannot wait any longer. We cannot sit by as mothers and fathers across this Nation sacrifice their children to the gangs of armed thugs who rule our streets.

To paraphrase our President, what is wrong with America can be overcome by what is good about America. Brady is a good, commonsense piece of legislation. The families of those murdered with handguns are telling us that. Are we listening? The cops are telling us that. Are we listening?

Is a 5-day waiting period to purchase a gun too much to ask? We give the cop on the beat a gun, a bullet-proof vest; why are we still denying him another crucial piece of his arsenal? A 5-day waiting period would give our cops a fighting change to keep weapons of death out of the hands of criminals and the mentally unstable.

It is time to end the carnage; it is time to end the fear of parents, parents staying up late at night wondering if the knock on the door is their son or daughter returning home from work, or a detective asking them to come downtown to identify a body.

It is time for a change; it is time for Brady.

IN SUPPORT OF THE BRADY BILL

(Mr. SYNAR asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SYNAR. Mr. Speaker, I rise to strongly support today's introduction of the Brady bill. Five years ago, a man named Larry Dale walked into Mercer's Discount Foods in Tulsa, OK, and opened fire on an unsuspecting crowd of shoppers. Dale's rampage killed one person and severely wounded another. Many Oklahomans were outraged to learn that Dale, a convicted felon with a history of mental illness, had walked into a gun store the day before his crime, filled out a single form, and walked out with his instrument of death.

The tragedy is that 5 years after Larry Dale proved how flawed the system is, the Brady bill is not the law of the land. With more than 639,000 violent crimes a year involving handguns, we cannot further delay the passage of legislation that helps erase this terrible statistic.

The good news is that most Americans, most Members of Congress and the President want to see the Brady bill enacted. In poll after poll an overwhelming majority of Americans support a federally mandated waiting period. Not surprisingly, organizations representing more than 400,000 rank and file police officers support the Brady bill. Additionally, during past Congresses, both the House and the Senate have voted for passage of the Brady legislation. And most importantly, just last week, President Clinton told Congress in his State of the Union speech, "If you pass the Brady bill, I'll sign it."

The time for debating the Brady bill is over. The majority of the country agrees that the Brady bill is a common sense approach to ending violence by denying guns to criminals. Let us pass this bill and get on with the business of saving lives.

WHAT CAN YOU DO FOR YOUR COUNTRY?

(Mr. APPLEGATE asked and was given permission to address the House for 1 minute.)

Mr. APPLEGATE. Mr. Speaker, our Nation is in deep trouble. If we do nothing, we will continue to slip into an economic abyss.

President Clinton has proposed some very tough and bitter medicine. If we do not take it, we could die.

We have got to have faith in the American people to be able to band together. If we are attacked by a foreign nation, we rally together and we fight that enemy, just as we did in World War II.

Well, we are under attack right now from within. The old formulas of the perpetrators of greed, abuse, and waste must be cast out, and it is up to you. It is your country, and only you can fix it.

I think we all remember when John Kennedy made his great inaugural address in 1961, and in it he asked of us what you can do for your country, what you can do for your country. Now is the time to ask, now is the time to do.

NORTH AMERICAN FREE-TRADE AND FINANCE AGREEMENT

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 60 minutes.

Mr. GONZALEZ. Mr. Speaker, I would like to begin what I am sure will extend at least a couple of times into the future with respect to something that is probably going to happen. It is maybe just a little less than imminent, right soon, but it is so-called, actually miscalled, misdescribed, the North American Free-Trade Agreement.

The truth of the matter is that the full title of that proposed agreement is North American Free-Trade and Finance Agreement, and therein lies the rub. It has been adroitly cloaked over so that any person reading a discussion of it or hearing about it would think that it was strictly adhering to some agreement between Canada, the United States, and the Republic of Mexico with respect to trade.

The truth is that that is the caboose, and the engine driving that so-called trade agreement is the finance or the banking. Remember that at the bottom of everything is banking, everything. It always has been, it is now, and it always will be.

But what always exercises me is how the efforts are made to deceive the American people.

Now, in a free country such as ours which, up to now, miraculously has maintained the essential institutional forms of this democratic, representative, republican form of government, and which implies that the people, in order to be informed, must make sure that their representatives are agents for the while, and in this case, the U.S. House of Representatives which, from the beginning, has been intended to be that prime constitutional office that is closest to the people as any kind of political office could be constructed.

Every 2 years the House has to renew itself totally. It is not a continuing body. The only way any of my colleagues or myself can get here is to be elected. We cannot be appointed.

□ 1220

And there is very good reason for that. And the reason why our system imperils, and has for a couple or three decades, like seldom before in its history, so many times it is the perception or misperception, as in fact I think it is, and particularly in today's world where, though we might have instantaneous electronic communication, the communication between neighbor and neighbor, man and man, woman and woman, citizen and citizen, much less between country and countries, is really less than what used to be the case.

In fact, let us begin here to illustrate the point I want to make with ourselves. When I was growing up—and that is a lot of years ago—it was another world. I would not be able to evoke it if I spent a year on the House floor, and no way could you evoke those lost worlds. No way, some aspects of them. What I want to evoke, but there are some that I think we should transmit.

One of those was that I still remember the names of the chief of police, the street commissioner, the part commissioner, certainly the mayor, whereas today every time—and I try to go often—I go to visit a school in the district, I will ask teachers and students, "Can you give me the names of the members of the city council?" They cannot. "Can you give me the names of your county commissioners?" They cannot. "Can you give me the names of our State representatives to the State legislature?" What is that?

So that I can remember when the cities, of course which were a lot smaller, and I am not trying to compare them, but today we do not have the neighbor-to-neighbor, the citizen-to-citizen relationship that I recall existed at that time even in a strictly segregated environment of that day and time.

You still had a human-to-human connection and a knowledge of how that other third or fourth lived than what is the case today.

Who, for instance, in this area, is aware of the terrible farm—so-called—farm labor conditions just 1 hour and 20 minutes' drive from Washington? The Eastern Shore, where the three States of Virginia, Maryland, and Delaware meet. When I first took the subcommittee, after becoming chairman of the Subcommittee on Housing and Community Development in 1981, everybody who went was astounded. And I myself, as I reported, had not seen those conditions since the Depression in the rural areas in Texas in the middle 1930's. Let me tell you that was pretty bad.

So, who knows about that? We live in a frenzied world, so that we become accustomed to accepting what is known as the electronic description of things, the television image.

Well, of course, you have got to be for fair trade, free fair trade between countries. Why, who is against that? It is like, "Are you for sin or against sin?"

But what exactly is it we are talking about? We are not talking about a concept, we are not talking about some agreement that, after some deliberation between respective representatives, was arrived at sometime last year and then classified and secreted. We could not get a copy of that for about more than a month, or more than that. And even today it is unexamined.

I am bringing out that section that has to do, and it has everything to do, with banking and financial things that have already begun to happen, as I will attempt to describe.

First, I think it is significant that you hear no mention of the true description of this proposed legislation. Free trade and finance: Why is there such a concerted effort made to just abbreviate and drop off finance? It does not say "banking," which is what it really is.

In the meanwhile, things have been happening in our country, south of the border, that there is no perception of up here. In fact, when I had not one but four releases a little better than a month ago, no newspaper, either in Texas or in my area or up here, would pick them up, or did. So it went unreported.

And this is one additional reason why I feel I owe it to myself, as chairman of the Committee on Banking, Finance and Urban Affairs, to which committee this legislation has never been referred.

Now, why? Why has that occurred? Every other type, with one exception, the so-called guaranteed agreement with certain countries, they have not been referred to the Committee on Banking, Finance and Urban Affairs. But this one never had, never has been.

So, when I saw the full title of that, I became interested, and finally, when I was able to get a copy of it—I tried to get staff, but we are limited, we have limited staff on the committee. So this I have done mostly with some help from some of the legal staff, but mostly from my own reading, my own research, and the help of, in my opinion, the best, most competent legislative director anybody in Congress could hope to have.

This young lady happens to be in my district office. My legislative director is not here; she is down in my district office. So that any citizen who wants to know about legislation does not have to hire a lobbyist or have connections with organizations that have lobbyists up here.

With that tremendous help and mind of hers, she being an attorney as well, I have been able to piece together enough to report to my colleagues and to charge you with the knowledge. There shall not be any reason for anybody to act in the blind from here on out, no matter what the excuse or the pressures are.

Unfortunately, to compound the error, and also, I believe it was last year—it could have been the year before; in fact I think it was before the year before—in a rushing fashion the Congress approved what was known as a fast-track resolution.

Now, what we said, since I found myself in politically elected office in government and particularly the legislative, that fast government is often dangerous government. And in fact I would say, more often than not has been dangerous government on every level I have had the privilege to serve on, the local legislative level, the State legislative level, and in the State senate and here in the Congress for 32 years.

Now, why would the Congress, on such a monumental proposal, say we are going to delegate to the President to enter into any kind of agreement he wants to enter with any of about 159 countries, but specifically at this time with Mexico and Canada, sight unseen, and no matter what he agrees, when he agrees, and brings it back to us we shall not amend? We cannot offer any amendments or changes; all we can do is vote it up or vote it down.

□ 1230

In the meanwhile, the regime south of the border was beginning to say politically, "We will live or not depending on the outcome of this agreement."

That is interesting. Why? Well, first, let me recite a few things that have happened here in the recent past that have everything to do with us as well, the United States, together with what I have been reporting on an international general level, and it has to do with the value of the dollar and its consistent sustained loss of value since 1985, which incidentally was the same year that we became a debtor Nation for the first time since 1914.

In the first place, there is more involved than just trade agreements that are supposed to bring about an equitable, or fair is the word, accommodation between the economic activities of the countries involved. That is the concept.

There is more involved than just banking and finance, because you have in the train of that things that have happened just before the advent of the so-called North American Free-Trade and Finance Agreement proposal, and that is the so-called maquiladora process, whereby Mexico and the United States allowed certain things to happen that brought over 3,000 corporations from the United States, mostly

labor-intensive manufacturing concerns or assemblies along the border from Matamoros to Colexico that now represents about—I forget how many hundred thousand jobs.

Last year I took the subcommittee and the full committee, the Subcommittee on Housing and Community Development of the Committee on Banking beginning on January 6 throughout the country. We started out in Connecticut at Bridgeport where you have total stagnation, a very, very sorry spectacle of one of the principal manufacturing entities in our country just a few decades ago.

Then we went down to Spartansburg, SC, on the border of South Carolina and North Carolina, where believe it or not, it may be the Sun Belt, but they sure have their problems.

Then we went to Cleveland. There we discovered that Cleveland has lost in less than a decade 33 percent or more of its manufacturing production capability. The overwhelming majority of that has gone to Mexico across the border.

Now, where are we on that one? Well, you had very little reporting of it up here, but today, for instance, I want to bring out how such things as the taxes paid by these corporations, these are huge entities like the huge banking interests that are behind the North American Free-Trade and Finance Agreement.

Now, we do not expect them to be for the public interest. We know they are what—oh, private enterprise and, of course, we have prostrated and hallowed that name, not free enterprise, private enterprise and what I have always reminded since before I came to the Congress, Hitler and Mussolini had private enterprise until the day they died. They did not have free, but they had private enterprise. In fact, most of those corporate entities that were cartels when that word was used before the transnationals and the conglomerates and all that in that period of time, they are still around. They are doing pretty well in fact. So are the bankers.

All during World War II when President Roosevelt announced, and I remember the day right before the entrance into the war and we had the first-time peace draft and then Franklin Roosevelt said we have got to prepare our defense, and then he announced right on the verge of the war that the intention was to produce 50,000 warplanes.

Well, there was not a thing he could do about starting even 10 unless we could get the magnesium required, and that had to be released by the cartel out of Germany through the bankers in Switzerland known as the Bank for International Settlements, which incidentally is still in control today.

How many of my American bankers realize that the recent increase on their reserve requirements, though they themselves are not involved in these highfalutin international transactions, like some of say our top 20, they still have to pay because it was an agreement imposed on the United States through the so-called Basel, Switzerland, where BIS, the Bank of International Settlements is located.

The United States is not a voting member of BIS. Oh, a couple decades ago or so it became an observer, but not a voting member.

They are the ones that said in the name of convergence, which is a fancy word for capital standards, that is, those European bankers were going to make American bankers come down, when they got into competition with them on securities or what today is rocking the whole unstable international currency markets, the so-called mechanisms and the value thereof the currencies, the so-called derivatives are speculative, if you please.

Well, all this now is being translated into activities south of the border where one of the hottest speculative giant casino operations has begun and which is impacting America because it involves American bank credit and American investors, corporate and otherwise, money and nobody wants to report on this. Why? I do not know. I do not think it is a cabal. I do not think it is a conspiracy. I think it is the good old American tendency since the end of the war not to focus in on anything that goes beyond the immediate crisis and then instead of preparing and anticipating, we sit until we are wallowing in crisis and we have for 40 years pushed aside the emerging issues which now have developed to the point where you are not going to have a push-button solution no matter how much our new President wants or anybody. It is going to take time if at all.

I am just reporting on one aspect that I think with knowledge we should avoid the worst consequences, but we are not up to now.

So let us go into some details. First, let me touch on the maquiladora which I discussed just a minute ago. These are operations that have gone to Mexico mostly because they have abandoned American labor. American labor has been sold out. It has been traded off as if it had been on a slave market auction since the sixties and the development of multinational operations of American-based corporations going over into other countries and have benefited from the cheap labor standards.

Where has that gotten us?

□ 1240

Where the average American wage earner in the United States, in the highest level of pay, the manufacturing, such as is left, earns considerably less than the German worker, the Japanese worker, the French worker, and the British worker.

Who wants to accept that, my colleagues? Yet I defy anybody to rebut that categorical fact.

That is the end result of what?

Thirty years of abandonment and betrayal of American production and American labor.

Mr. Speaker, just since Reagan we have lost over a million, several million, prime manufacturing jobs, never to come back, lost, gone, and we have turned from a net exporting country to a net importing country, which then makes the critical, crucial issue, which in vain I have been trying to discuss since 1979, not only with my colleagues on the Committee on Banking, Finance and Urban Affairs, or at least some of them that seem to be interested, but with the leading monetary and financial directors of our country and, on a couple of occasions when I have that opportunity, with a couple of pretty big international bankers.

And that is the danger, that the United States for the first time in its history will have to be paying back the monumental debt, both on the private, you and I, as well as the corporate, and especially the governmental, debt in somebody else's currency.

What does that mean? It means everything.

But how do we translate down to the perception that would enable us to penetrate the level of consciousness of the average governor in our system, both legislative as well as executive branch? I do not know. All I know is that I feel it is a responsibility, particularly on those of us who are charged with knowledge by merely being Members, as a privilege of a committee and in a position of leadership in that committee, of not having an excuse for not being charged with knowledge.

After all, Mr. Speaker, I have been on this committee since I came to the Congress 32 years ago, and I should have picked up something. I do not claim to be an expert, but let me tell my colleagues, "Don't ever mention experts to me because I have learned that unexamined experts are no more expert than the nonexpert."

We cannot continue to endanger the country as it is now, clear and present, because the United States has been the only country in history that has been able and unable to pay its debts in its own currency. But if the dollar has lost 60 percent plus of its value since 1985, how can we keep from having our currency debauched, if it is not already? And just time, events, and circumstances, which evidently today are happening very fast, not as a separate, intermittent, but a cavalcade of events? Have we learned nothing from what has happened just since 1989 and its obvious implications?

So, subtracting from that and focussing on this, let me tell my colleagues about the maquiladoras because that means like in the case of if that part of the so-called economic or trade agreement that I have seen actually came about, it will mean a tremendous loss

of jobs in that area in which we need them more than ever; that is, on the level of the unskilled, but still necessary, if we have production and manufacturing. But remember that has fled our country.

Now the big argument I had in private with those that first began to push this 2 years ago was, "Henry, look. You may be right. But there's the choice. These jobs are going over to Hong Kong, Korea. Wouldn't you rather have them here across the border?"

I said, "No. I would rather have them here in the United States where they ought to be and only in those cases where there is reason why. But there isn't legitimate reasons."

Let me tell my colleagues why. The maquiladoras, for instance, and the corporations that have gone there have the best of all possible worlds. They get the best benefits of our tax bills, tax laws, and rules and regulations, so they are able to whip our country on every level indiscriminately. Nobody says, "Boo."

Why? Because we have got to do something about a fair-trade agreement and help these corporations of ours operate in a competitive fashion. That is a lot of malarkey.

Let me tell my colleagues plain and simple. I want to place at this time in the RECORD a very, very fairly comprehensive article that appeared in the St. Mary's University Law School Journal, Law Journal, volume 23, beginning on page 721, entitled: "Federal Income Tax Issues in the Organization, Financing and Operation of Maquiladoras." Talk about tax giveaways, subsidies and reductions or elimination. It is hard to beat this. And this is just a little glimmer of a sort of look-into.

So, we are not talking about just a fact that we want to help. Of course we want to help. But I have always said, and I have said this for years, that one does not have to give the family jewels away to prove they are a good neighbor, and that is exactly what seems to be going on.

So, Mr. Speaker, I ask my colleagues to take a look at this analysis of the Federal income tax issues in the organization, the financing and operation of maquiladoras. It is by a Mr. William R. Layton and T. Richard Sealey III. It is very illustrative, and I have offered it for the RECORD.

Now what about this agreement? What does it do for banks? Well, I will tell my colleagues what it is pure and simple in plain language. It is a backdoor scheme for our biggest American banks to get what they have not been able to get directly from Congress or through the processes of such things as interstate banking, such things as high-risk investments, without the consequent reserves which anyway the biggest ones pretty much have now, as I have been bringing out and the reason why the whole house is shaking.

Let me just explain that by way of parentheses. Through the years I have heard, as I have said before and repeat, the outstanding witnesses we can get from the economist world, and there we have an interesting profession. It is a quarrelsome profession. They do not agree among themselves or anything, but it is very interesting.

Then I read the President's economic message each year, the one that was just released by President Bush. I have analyzed it. It is very interesting reading, very well done.

□ 1250

It is very well done. You cannot quarrel with the economic advisers and their jargon, their tenets, and whatnot. But I was here when on August 15, 1971, while the Congress was out of session, President Nixon took us off the so-called gold exchange system and simultaneously devalued the dollar by 10 percent. Interestingly enough, there was not one American publication that reported it that way, none at all. The European press did. Incidentally, I go back to that release I said I had made about 6 weeks ago that nobody picked up here, but the international press did. It was written up in the European press and in the Japanese press. So the international press knew what I was talking about there. They reported it. And so it was that way then.

Then right after we came back, after Labor Day in 1971, lo and behold, the Banking Committee was asked to pass, without changing a comma, the Economic Stabilization Act of 1971. Economic stabilization? That sounds great. That means they want to stabilize things. But what it translated to in plain American English was wage and price controls.

Now, it was assumed that the liberals, whoever they may be, were supposed to be in favor of economic stabilization and controls. It was assumed that the conservatives were against that, however they may be today, because we have had such a debauchery in language as well as in currency, that it is difficult to talk with any degree of rationality on the way words are supposed to be, meaningful and true.

So who comes before the committee? The Secretary of the Treasury, John Connolly, my fellow Texan. President Nixon said that "This has got to be passed because we are now confronting 5-percent inflation." At the first hearing it was an awesome presentation. There at the table was Secretary of the Treasury John Connolly, the President of the AFL–CIO, George Meany, the head of the Automobile Workers Union at that time, the chairman of the board of General Foods, the chairman of the board of General Motors, and one or two others that I do not recall. And they all said the same thing; "You've got to pass this. Don't change a comma." Every one of them said that.

The first thing that hit my mind was the memory of what I had read about Germany. When Germany was in the throes right at the time, Hitler was beginning to come on the horizon, and the Germans, in their style, created the Grand Chamber of German Economics, and, of course, it floundered and was flustered just like the Weimar Republic. And, incidentally, there are awesome parallels between Weimar and the United States since World War II. It is very disturbing to somebody like me who for years and years, going back to when I was 15 years old, observed such things as the rise of Hitler and the rise of Mussolini and what that atmosphere was then. This was before TV and even radio, because radio was a relative newcomer then by the time the 1930's came around.

But I can tell you this: I can recall as if it were today in 1938 and 1939 hearing that crackling transatlantic radio voice of Adolf Hitler—"Ein Deutschland"—and then hearing him say in German, "We are being encircled. We will not allow it. We are being encircled by the British and the French, but we will break out."

And I wondered about it. And then those sonorous voices—"Sieg Heil" coming from the Nuremberg Sport Plaza.

Then I heard Winston Churchill later in a magnificent address, also coming over that crackling radio—"We shall fight," "We shall fight from every street," and so forth, and, "blood, sweat, tears." I heard that. We do not hear that today.

Do we hear the voices of Saddam Hussein speaking over this tremendous network of radio and TV in the Arab Moslem word covering all over that area? No, we do not. Do we even hear a translation? No, we do not.

Do we hear Slobodan Milosevic, the Serbian leader? No, we do not. Do we hear about the treaty that Herr Kohl, the German leader, and the Russian leader, Gorbachev, entered into November 1990, whereby Germany agreed to offer up to 87 billion deutsche marks of help to the then still Soviet or Russian Union? There were certain understandings, one, that in exchange Germany would also contribute 8 billion deutsche marks for housing for the Russian troops that were going to leave East Germany and go to Russia? And in exchange for that there were certain understandings. One was that Germany would not have more than a 300,000 standing army. That never was reported in the American press. I read that in the German press and in the European press, but not in the American press. Now, what has that got to do with this? Everything, because, I ask, where is that agreement? How much of that money is there, and in effect what are the conditions of its repayment now that we have the loose Confederation of States, with no re-

ports? But that is the reason why Germany is being blamed. Maybe to some extent it is true, and maybe there are some other factors responsible for last September 16's tremendous shakeup of the so-called exchange rate mechanism between the currencies in the European Union which led to Great Britain withdrawing the pound and floating it in its devastated condition like the dollar, and also France and Spain and Italy, and Ireland even, in this great convulsion.

But let us go back to 1971. When I read the bill, I could not believe it.

□ 1300

I said gentlemen, this reminds me of the German period when these German industrialists came before the German Government and said, "You have got to have this control." I said if we pass this without any kind of accountability, what we are doing is delegating to President Nixon greater powers over American business, industry, and the economy, than were given to Franklin Roosevelt at the height of World War II.

Well, who wanted to listen? They looked upon me askance. I was down the row at that time in the committee. So all I had was 5 minutes to ask a question.

All I did was make a statement. I said this is an awesome spectacle. It reminds me of that period of German history.

Well, what happened? They came in, the chairman, who was my fellow Texan, a great man, Chairman Pepper, called me in and said, "Henry, you have been kind of engaged in dilatory tactics. You got together with a member of the minority."

I did. I teamed up with a member of the minority who was supposed to be a conservative, I am supposed to be a liberal, and we began to kind of start a little guerrilla activity. I wanted an amendment.

So I said, "Mr. Chairman, I can't understand why anybody that is interested in the greatest interest of the greatest number, what is wrong with an amendment that says, Mr. President, OK, so you are going to have this power; but you come back to the Congress every 90 days and report to us the progress or lack of progress."

He said, "Well, we can't do that. We want to help John Connally."

I said, "Well I will leave you." So between my friend on the minority and myself we had sort of many filibusters. Finally, after the third week, the chairman got angry with me and said, "I am not going to recognize you any longer," and they wooped it out. It was supposed to have been passed the first week of October 1971. It was not passed until about October 30, 1971. When it got out of committee I voted against it. There were only five of us. But I placed in the RECORD a dissenting view. I ask any one of my colleagues that is interested to look it up.

I wish I had been wrong in what I said. As it turned out, fatefully, its consequences we are still feeling. Whether any big economist agrees with it or not, I say that, and I will say why, and that is the reason I am bringing in this present activity now. It is correlated.

First, they passed the so-called wage and price controls. But they assented, naturally. Remember that I was there during the war when we had wage and price controls. I remember that even with the spirit of unity that existed, we had evasions of the wage and price commodity control.

You had rationing of sugar, beets, and so forth, but there were some black marketeers that were able to evade it.

I quoted Cohen's law, which goes to the effect that for every control erected, there will be a way found to evade it and avoid it.

Well, here we were in 1971, supposed to be in peacetime, and you were going to impose this on the highly pluralistic, complicated economy that the United States is?

So I then said all right, there is another point. And this was proved. It proved the wisdom of that era's leaders, like Franklin Roosevelt, and great economists, and not only economists, but wise leaders and their wisdom. There were fellows like Leon Keyserling, who really was the architect of the Basic Housing Act, and then the amendments, in 1947, but above all knew the U.S. economy like no man I have ever heard or had the great opportunity of being a friend of.

What he said and what he told me for years later until his death just a few years ago has been preeminently correct.

So we went to the House floor and there again it went through. There was another handful, and I was one of those that voted no.

Now, some were confused. They said, "Well, we thought you were a liberal."

I said, "Well, it all depends on how you would describe one." I don't like labels. Life, particularly when you are trying to be in the public arena, is not that conveniently compartmentalized. That is not life.

Second, if you are going to be true to your oath of office, above all, for whom are you supposed to be working on behalf of? Industry? Business? Banks? S&Ls? Or the people? Everybody forgets that. The way you hear some people still talking, you would think the Committee on Banking, Finance and Urban Affairs is there for the aid and convenience of the bankers.

Well, all you have to do is just remember where you come from and sit back and say wait a while. What is the greatest interest and the greatest good of the greatest number? Then you will act accordingly.

So we got the controls. I said we need one addendum. I said look, so you have imposed them. But you better start spending as much time as to how you are going to lift them, because therein is going to be the key critical factor.

Well, what happened? They did not work because of the exemptions. The first administrator, Dunlop, from Harvard, came in within a month and had to request an amendment, that I had anticipated, because I knew back home that if you exempted the cattle raiser and the grain producer, but did not exempt the packer, and particularly the big institution that began Mexican food here, Gerhardt's chili con carne, which put it in the can. I said when Gerhardt buys that meat from the meatpacker he has to pay the processing and then go. It is based on no control over that cattle raiser. Of course, the pound per hoof went up, but Gerhardt chili con carne, once it was put in the can and put it on the shelf, was controlled.

The baker had to pay that much more for the grain, process it, and once he put it in the loaf of bread and put it on that grocery shelf, was controlled.

Naturally I raised that issue. Mr. Dunlop came in within a month of his appointment and said, "Well, we have got to do something about it. We have to do this, do that, and do the other." It did not work.

So less than 2 years later they were going to phase it out. They had phase 1, because they did not know exactly how they were going to phase it out. Then they had phase 2, then phase 2½, and then phase 3.

But in the meanwhile, you began to hear the phrase "stagflation." Why is it that for the first time you have stagflation here in the economy, but inflation over here?

That is the reason. It never did recuperate. That has been my contention all along.

But you do not hear the big economists, because after that first group I described a while ago we had all of the leading national and international economists, the experts, the know-it-alls, or as they say in German, besserwissers, know-it-alls. Not a one of them predicted anything, that I know of, including what would happen to the dollar and the consternation. Because when we got off the gold exchange standard, which was at least some peg of reference, we went into the floating, which is for now in Europe in a great deal of flux.

All through mankind's history, finance, money, is an enemy of instability or fear.

We were the country that escaped the ravages of war. I am afraid we may not in the future. I hope I am dead wrong there, but we have done certain things just within the last 5 years that will ensure retaliation.

Can any of my colleagues say that we can go out, even worse than Hitler, and

bomb a defenseless laborer's housing made of flimsy wood built in 1908 when we brought the laborers from Jamaica to build the Panama Canal, bomb them with Stealth bombers and incinerate several thousand human beings?

□ 1310

We cannot do that with impunity. There is a higher power of accountability. Can we go out like we did, with a great ado, and kill over 200,000 men, women, children, 15-year-old conscripts, Arab Moslems, like we did in the so-called Persian Gulf war, which, incidentally, the only heroes that have come out of that have been generals. This was the first war that the only heroes have been generals.

But we have over 200,000 that died human beings. They may be Moslem. They may be Arabs, but they are human beings. We have stirred up into a rebellion that I call "the world rebellion of the Moslem" from Pakistan to Arabia. And we seem to be blithely unaware.

How does that dovetail in with what is happening in Europe, in what the Germans have called the greater Germany or Mitteleuropa? Everything. Because you now reach the point of no return there, which it will be difficult with this horrible, horrible savergy. Twentieth century? What a way, the bloodiest century in the history of mankind about to end on that note, too.

America certainly has stood for the very opposite, but what has become of us in our judgment and our counsel? I say those are events that have just barely started. When we were tooting and hollering and yelling that the Persian Gulf war had ended, I said it is the beginning. God only knows where. We are seeing now, why, because in that eastern section there of Europe, once you start affecting Albania and you have two or three of the other countries there that as of last year a treaty with Turkey, and Turkey was the favored trading partner of Iraq and is once again having dreams of an Ottoman power structure. One flows into the other, and we blithely ignore history, even of Europe.

So here we are in our backyard or front porch, whatever you want to look at it, anyway it is what the law calls "contiguous" country. And, therefore, that triggers not only in tax law but in trade law certain things that are drawing corporations that are necessarily pro bono, our giant banking and financial institutions, that certainly are not pro bono, are taking advantage of to sneak through the things.

For instance, I would like to put in the RECORD one of the most, up to now, perceptive articles entitled "Mexico's bank privatization gamble," by Scott B. MacDonald, which has charts and all, I am going to quote, "This reflects Salinas' willingness to bet that the newly recreated financial groups will not embark upon a speculative frenzy."

It has already. Why? As of January 1 and down along my line, down in the border, we had a little glimmering about the so-called new peso, which in Mexico is the big discussion. The Mexican Government, as of January 1, though they enacted it last year, getting ready for this, what I call giant casino speculation that is going to suck in a lot, it has already started, announced that it was going to have a new peso.

So what they did, instead of the thousand peso bill, they printed a 1-peso bill. So Mexican citizens in Mexico were telling me, "Well, we don't know what this is all about. It makes no difference. We still have to ante up the same amount of money when we want to buy things."

I said, "Well, that is true, because it has relevancy in Mexico, if you want to buy things."

But what it did was devalue the dollar and enhanced the peso, when it comes to international or Mexico-United States transactions. That means that the American purchaser of all of these dire goods we must buy, natural goods, you will have to pay 3 times more. But what it means in this situation, because in correlating these very complicated statutory references, in this section of the trade agreement known as finance, you find that what it really does is give Mexican banks certain powers among which they can do business in the United States, but also American banks.

And in this case the principal ones.

Mr. Speaker, I include for the RECORD the documents to which I referred.

FEDERAL INCOME TAX ISSUES IN THE ORGANIZATION, FINANCING, AND OPERATION OF MAQUILADORAS

(By William R. Leighton* and T. Richard Sealy III**)

I. INTRODUCTION

Begun in 1966 in response to the United States' elimination of its Bracero Program,[1] Mexico's Maquiladora Program, created to encourage U.S. and other non-Mexican enterprises to establish manufacturing facilities in Mexico, has become that nation's most successful means of attracting foreign investment, and has spawned a domestic industry whose economic output is second only to that of Mexico's national oil industry.[2] In the decade of the 1980s, the maquiladora industry experienced explosive growth from six hundred and twenty plants in 1980 to more than two thousand currently which employ approximately five hundred thousand workers earning an average wage of five dollars per day plus a free lunch.[3]

Maquiladoras are also important to the United States' economy. U.S.-Mexico bilateral trade hit a record $59 billion in 1990, making Mexico the United States' third largest trading partner.[4] Total U.S. exports to Mexico tripled between 1986 and 1990 from $12.4 billion to $28.4 billion.[5] Maquiladoras account for a substantial share of this trade. The University of Texas estimates that U.S. sales to maquiladoras were worth approximately $8 billion in 1989. This estimate is corroborated by both the Bank of Mexico, which states that goods imported from all countries in 1988 for use in the maquiladora sector amounted to $7.8 billion, and by U.S. production-sharing statistics, which show that U.S.-origin value incorporated in maquiladora imports from Mexico during 1989 was worth $6 billion.[6] Mexico tends to "buy American"—the United States supplies seventy percent of Mexico's imports.[7] The maquiladora trade dominates U.S. imports from Mexico, accounting for forty-four percent in 1989. Absent the agricultural, petrochemical, and steel sectors, to which foreign assembly provisions do not apply, Maquiladoras goods accounted for seventy-eight percent of total imports.[8] Also, 1989 U.S. imports from Mexico contained fifty-one percent U.S.-origin content compared with thirty-three percent for imports from Canada, and thirteen percent for the rest of the world.[9] Maquiladoras purchase the overwhelming majority of their components and supplies from U.S. sources.[10] In 1990, U.S. exports to Mexico were related to 538,000 U.S. jobs, half of them created in recent years.[11] Obviously, the United States has a direct economic interest in the continued viability of the maquiladora industry.

While no particular form of organization is required by Mexican law to qualify for maquiladora status,[12] the preferred form of operation seems to be the "Sociedad Anonimá de Capital Variable" (S.A. de C.V.), which is essentially the Mexican counterpart of a corporation in the United States.[13] Unless otherwise specifically stated, the maquiladora business scenarios in this article assume a United States parent corporation conducting a maquiladora operation through a wholly-owned S.A. de C.V. subsidiary, or a United States corporation and a Mexican S.A. de C.V. enjoying a brother-sister relationship.[14] This article principally considers various United States federal income tax issues in the formation, financing, and operation of maquiladoras. The first section discusses "debt/equity swaps," which have frequently been used to provide the initial funding for maquiladoras. The following sections then consider the income tax effect of the operations of maquiladoras, including transfer pricing, intercompany services, intercompany expenses, intercompany use of tangible and intangible assets, and intercompany receivables under I.R.C. §482, the impact of I.R.C. §1059A on correlative adjustments under I.R.C. §482, and the "contiguous country" election of I.R.C. §1504(d).

II. DEBT/EQUITY SWAPS

A. General Background

Due to economic conditions in Latin American and other developing countries, and the problems encountered in servicing their worldwide debt, the governments of such countries have been willing to enter into so-called "debt/equity swaps" with foreign businesses. Due to lack of creditworthiness, these developing nations' foreign public-sector debt can be purchased on the international market at substantial discounts from face value. A typical market purchase price would be sixty-five percent of face value, i.e., a market discount of thirty-five percent. In order to encourage foreign investment and to ease the debt burden, the governments of these countries will repurchase (retire) this debt with government funds for eighty-five to one hundred percent of face value. The funds used to repurchase the debt must, however, be invested in the debtor country, typically through corporations organized under the laws of the debtor

country. Thus, United States parent corporations are able to obtain foreign debt on the international market for a cost of sixty-five percent of face value, plus a one to two percent commission to the investment banker (or other broker), and exchange it for foreign currency worth eighty-five to one hundred percent of the face value, which must be used for capital investment in the nation which issue the debt. A debt/equity swap permits an enterprise to acquire far more local currently (thus, buying power) than it could by simply purchasing currency at the prevailing market exchange rate.[15] Mexico, Chile, Argentina, Brazil, and the Philippines are among the nations with such programs.[16]

E. Mexico's Debt/Equity Swap Program

The government agencies responsible for conducting the Mexican debt/equity conversion program are the Secretaría de Hacienda y Crédito Público (Ministry of the Treasury and Public Credit or SHCP), and the Comisión Nacional de Inversiones Extranjeras (National Commission on Foreign Investments or CNIE).[17] Prior to the actual transaction, the U.S. parent corporation (investor) conducts extensive negotiations with these agencies concerning the intended use of the proceeds of the swap, i.e., the type of investment to be made in the Mexican economy.[18] There are no limitations on these transactions, although the Mexican government has established criteria to rank them according to their perceived benefit to the economy. For example, purchase of stock in public enterprises which the government is privatizing (e.g., Aeronaves de Mexico), projects which will export most of their production (or which will effect import substitution, i.e., will produce goods in Mexico which it is currently importing), projects involving the transfer to Mexico of advanced technology, and projects which will be situated away from Mexico City receive high-priority.[19] The basic aim of the program is to avoid the outflow of the peso proceeds of the swaps, so that proposals involving the purchase of machinery and equipment from abroad, the repayment of debt to foreign (i.e., non-Mexican) lenders, or increases in working capital not specifically related to a priority use are not considered.[20] The government also prefers to grant equity injections to enterprises which are already totally owned by non-Mexican interests.[21] After all, the program is designed to attract new foreign investment, rather than simply to reshuffle pre-existing domestic investment.

There are, however, specific limitations on the form which the new investment must take. Under section 5.11(a) of the New Restructuring Agreement of the Mexican Foreign Public Sector Debt of August 29, 1985,[22] the investment must take the form of "qualified capital stock." Section 5.11(b) of the agreement defines "qualified capital stock" as capital stock of any Mexican public sector entity or private sector company which is:

(1) issued in registered, certificated form in the name of the foreign bank holding the Mexican foreign debt, or in the name of a person (in the case of this article, the U.S. parent company wishing to participate in the debt/equity substitution program) which the Bank designates and which is not a "Mexican entity" (any individual who is a resident of Mexico, and any non-individual entity with its principal place of business in Mexico);

(2) not transferable to any Mexican entity before January 1, 1998, and the certificate of which bears a legend to this effect;

(3) not by its terms subject to redemption on a basis more favorable to the bank or the designated person than the amortization of the debt for which it is issued in exchange (i.e., the stock cannot be redeemed prior to, or in amounts greater than, payments due under the Mexican foreign debt instrument for which the stock is issued in exchange);

(4) not entitled to guaranteed dividends payable irrespective of earnings and profits; and

(5) not convertible into any instrument or security other than qualified capital stock.

Once the CNIE and SHCP have approved the proposed investment and authorized the swap, the U.S. parent will purchase Mexican foreign debt from a foreign bank for a deep discount, for example, sixty cents for each one dollar of face value. The debt will then be cancelled by the SHCP. The SHCP will then crate and fund an account in the Mexican treasury (Tesoreria de la Federacion) for the Mexican subsidiary with an amount of pesos calculated by multiplying the face amount of the cancelled debt (always denominated in dollars) by the current pesos per dollar exchange rate, less a discount determined in advance by the government agencies, which varies inversely with the determined priority of the investment. For example, assume that the U.S. parent acquires one million dollars face amount of Mexican debt on the international market for six hundred thousand dollars, that the free-market rate of exchange on the date of funding is three thousand pesos/dollar, and that the priority discount is ten percent. The subsidiary's account will be credited with three billion pesos (one million dollars face amount of debt x three thousand pesos/dollar exchange rate), less a discount of three hundred million pesos (ten percent of the three billion pesos), for a total of two billion, seven hundred million pesos. The subsidiary will then issue qualified capital stock, with a par value equal to the peso proceeds, to the U.S. parent. Thus, in our example, for six hundred thousand dollars plus transaction costs, the U.S. parent acquires one hundred percent ownership of a Mexican subsidiary with a bank account worth nine hundred thousand dollars[23] which must be used for the authorized investment in Mexico.

C. Revenue Ruling 87–124

Revenue Ruling 87–124[24] sets forth the position of the Internal Revenue Service on debt/equity swaps. The ruling provides, in Situation 1, a typical debt/equity swap scenario. X is a U.S. bank which holds a dollar-denominated debt (the obligation) of foreign country FC, evidencing a loan of one hundred dollars which X made to FC's central bank. X's adjusted basis in the obligation is one hundred dollars. Y is a U.S. domestic corporation, and FX is a corporation organized under the laws of FC. FX engages in business in FC but not in the U.S. The local currency of FC is the LC. The free-market exchange rate on July 1, 1987 was ten LCs per dollar.

FC has a program under which a holder of FC's dollar-denominated debt can negotiate with the central bank of FC to receive LCs if the holder agrees to invest the LCs in the stock of an FC corporation or otherwise use the LCs in FC in a manner approved in advance by the government of FC. The program controls the LCs by either remitting the LCs to, or crediting them to the account of, an FC corporation that issues capital stock to the holder, or by otherwise channeling the LCs to a designated use in FC. In the case of a stock investment, the stock cannot be sold or otherwise transferred to other FC entities. The amount of LCs which the central bank will give the holder in exchange for the debt varies according to how the LCs are used.

In accordance with a prearranged plan pursuant to the FC program, on July 1, 1987, Y purchased the obligation from X for sixty dollars, which was the fair market value of similar FC debt in the secondary international markets. X, on behalf of Y, delivered the obligation to the central bank, which credited the account of FX with nine hundred LCs. FX then issued all of its capital stock to Y.

According to ruling 87–124, under I.R.C. §1001(a), X realizes a loss of the sale of the obligation to Y in the amount of the excess of its adjusted basis in the obligation (one hundred dollars) over the amount realized on the sale (sixty dollars). Y's adjusted basis in the obligation is sixty dollars. Y is considered to have received the nine hundred LCs from the central bank in exchange for the obligation, and then to have contributed the LCs to FX in exchange for the FX stock. Y realizes a gain on the exchange of the obligation for the nine hundred LCs to the extent that the fair market value of the nine hundred LCs exceeds sixty dollars, Y's adjusted basis in the Obligation. The fair market value of the nine hundred LCs is determined by taking into account all of the facts and circumstances of the exchange. The limitation on Y's use of the nine hundred LCs will generally reduce their fair market value below the free-market exchange rate of ninety dollars. Y's basis in the nine hundred LCs is sixty dollars plus the gain recognized on the exchange. The fair market value of the FX stock is presumed equal to that of the nine hundred LCs, and is Y's basis in the FX stock.

Situation 1 of the ruling is clearly patterned upon a program very similar to, if not identical with, the Mexican program. Thus, under the ruling, the U.S. parent, which in the Mexican program example purchased three billion pesos debt for six hundred thousand dollars, would realize a gain on the debt/equity swap equal to the excess of the fair market value of the two billion, seven hundred million pesos, as restricted by the Mexican government, over six hundred thousand dollars, which is the U.S. parent's adjusted basis in the Mexican debt exchanged for the pesos.

Many U.S. parent companies who utilize debt/equity swaps do not agree with Revenue Ruling 87–124's conclusion that they are not taxable events which result in realized and recognized gain. The following portions of the article consider the major arguments advanced against the ruling.

D. The Step Transaction Doctrine

Taxpayers have attacked the ruling under the "step transaction doctrine." This section of the article considers the doctrine, its application to debt/equity swaps, arguments which have been advanced under the doctrine against the ruling, and possible counter-arguments.

1. Does the Doctrine Apply to Debt/Equity Swaps, Assuming That the Taxpayer Can Assert It?

The step transaction doctrine is a rule of substance over form[25] that "treats a series of formally separate 'steps' as a single transaction if such steps are focused toward a particular result."[26] The Tax Court has described the doctrine as follows:

The step transaction doctrine generally applies in cases where a taxpayer seeks to get from point A to point D and does so stopping in between at points B and C. The whole pur-

pose of the unnecessary stops is to achieve tax consequences differing from those which a direct path from A to D would have produced. In such a situation, courts are not bound by the twisted path taken by the taxpayer, and the intervening stops may be disregarded or rearranged.[27]

The existence of an overall plan does not require that the steps comprising it be disregarded. The step transaction doctrine combines a series of individually meaningless steps into a single transaction.[28] Thus, the party seeking to invoke the doctrine[29] must show that the steps are individually meaningless or unnecessary, i.e., that they lack independent economic significance.[30]

It has been argued that, under this doctrine, the steps of a debt/equity swap should be collapsed into a contribution of capital by the U.S. parent to its Mexican subsidiary in exchange for its stock, thus escaping taxation under I.R.C. §351. Under this scenario, the purchase of the Mexican debt, its transfer to the Mexican government, and the deposit of the pesos to a bank account for the subsidiary, would be disregarded.[31]

On the other hand, it can be argued that each step in a debt/equity swap has independent economic significance and is undertaken for valid business purposes. The investor (U.S. parent) purchases the Mexican foreign debt from an unrelated holder in the international market at a bargained-for, arm's length price. This transaction is, arguably, economically significant because the holder parts with foreign public-sector debt, with uncertain prospects for repayment, and receives money (dollars, a stable international currency) in exchange. The investor parts with that same money and receives the debt, thereby assuming the position of the original holder. The real economic positions of these parties have changed.

In the next step, the investor transfers the discounted debt to the Mexican government, and receives in exchange (through its subsidiary) money, this time in the form of pesos, an international currency with less stability than the dollar, but with a more certain value than the debt. The Mexican government is relieved of a portion of its debt burden, which includes future debt-service costs in the form of out-flows of foreign exchange, as well as the time and effort which it might spend in future restructuring negotiations, in return for simply issuing more of its own currency, which carries no risk, except perhaps added inflationary pressures.[32]

In the last step, the currency is expended to create a facility which produces goods at a much lower cost than would be possible in the United States, benefitting the investor, and which expands Mexico's capital stock, creating jobs for its citizens and providing new technology to its industry.

Each "step" may thus constitute a legitimate business transaction with economic substance. Further, it may be suggested that all of them are necessary to accomplish the objectives of both the Mexican government and of the investor. The mere fact that, together, they form the "overall plan" of the debt/equity swap may not deprive them of their independent significance.

2. May the Taxpayer Successfully Assert the Doctrine?

Assuming that the taxpayer invokes the doctrine, thereby attacking the form in which he has voluntarily chosen to cast the transaction, the general rule is that "while a taxpayer is free to organize his affairs as he chooses, nevertheless, once having done so, he must accept the tax consequences of his choice, whether contemplated or not, and may not enjoy the benefit of some other route he might have chosen to follow but did not."[33]

By contrast, "the Government may not be required to acquiesce in the taxpayer's election of that form. . . . The Government may look at actualities and, upon determination that the form employed . . . is unreal or a sham, may sustain or disregard the effect of the fiction as best serves the purpose of the tax statute."[34]

Thus, there may be some question as to whether a taxpayer may successfully invoke the step-transaction doctrine and contend that the substance of the transaction differs from the form in which he chose to place it.[35]

E. Presumed Equivalency In Value Argument

Taxpayers have also argued that Revenue Ruling 87–124 is incorrect by asserting that, even if the debt/equity swap's steps are to be viewed separately, and that the Mexican debt is in fact exchanged for Mexican currency in a taxable event, the currency received should be presumed to be equivalent in value to the debt exchanged for it, allegedly because the currency is incapable of being valued.[36] On the other hand, there exists a ready international market for pesos; daily quotes are available for peso/dollar exchange rates. The restrictions on the use of the pesos must also be taken into account. However, it should also be remembered that the pesos are used for a purpose desired by the investor.

F. Capital Contribution Under I.R.C. §118

The final argument against application of the ruling and taxation of the debt/equity swap which this article considers is that the excess of the value of the Mexican currency over the cost of the debt exchanged for it represents a contribution to the Mexican subsidiary's capital by the Mexican government, and is exempt from taxation under I.R.C. §118.[37] That section provides that, "in the case of a corporation, gross income does not include any contribution to the capital of the taxpayer."[38] The regulations under the section state that it applies to contributions to capital made by persons other than shareholders, and gives as an example the value of land or other property contributed to a corporation by a governmental unit "for the purpose of inducing the corporation to locate its business in a particular community," or to enable it to expand its facilities.[39]

Thus, the argument goes, the excess of the value of the pesos over the cost of the debt represents "property" "contributed" by the Mexican government to the subsidiary or the investor to induce them to build the facility in Mexico. A potential problem with this argument, however, is that the pesos are not an outright grant, but are paid in exchange for the cancellation of the debt, which benefits the government. The regulations provide that "the exclusion does not apply to any money or property transferred to the corporation in consideration for goods or services rendered."[40] The Mexican government makes its payment of currency in exchange for the direct benefit of the repayment of a portion of its debt with its own currency, rather than foreign exchange, and the concomitant reduced future debt service costs and associated activities.[41]

The foregoing discussion involves issues relating to the formation and financing of maquiladoras. The remainder of the article addresses some tax aspects of a maquiladora's operations.

III. I.R.C. §482 ALLOCATIONS INVOLVING MAQUILADORAS

A. General Background

As the maquiladora industry typically involves two or more closely related entities, there exists a great potential for the shifting of income and expenses between the related entities. As a result, many issues can arise in the maquiladora industry with respect to allocations under I.R.C. §482. Section 482 provides that

"In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Secretary [of the Treasury] may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such organizations, trades, or businesses."

The purpose of I.R.C. §482 is to place a controlled taxpayer on a tax parity with an uncontrolled, unrelated taxpayer.[42] Moreover, an intent to evade tax is not a prerequisite to an I.R.C. §482 allocation.[43]

A necessary concomitant of I.R.C. §482's broad grant of authority to allocate the specified items is that any such allocation must be sustained absent a showing that the Internal Revenue Service has abused its discretion.[44]

The regulations promulgated pursuant to I.R.C. §482 provide that if the secretary makes an adjustment to the income of one member of a group of controlled taxpayers, he shall also make appropriate correlative adjustments to the income of any other member of the group involved in the allocation.[45]

Section 482 issues may arise in the maquiladora context in several ways. The most common problems, which will be discussed below, are transfer pricing, intercompany services, payment of intercompany expenses, intercompany use of tangible assets, and transfer of intangibles. Although a discussion of transfer pricing is included, transfer pricing issues generally arise in the context of attempting to shift the income from an entity in a higher tax country to a related entity in a lower tax jurisdiction. Maquiladoras, however, typically involve Mexican corporations formed to provide labor intensive services at reduced cost to American parents. The Mexican maquiladoras are generally not profit centers, but are more in the nature of cost centers. Thus, most of the I.R.C. §482 issues which will arise with respect to maquiladoras will involve the American entity incurring costs on behalf of its maquiladora.

B. Transfer Pricing

Although it will not be common, transfer pricing issues could arise with respect to sales of products from the Mexican maquiladora to its related American entity. The regulations under I.R.C. §482 provide that where one member of a group of related entities sells tangible property to another member of the group at other than an arm's length price, the Internal Revenue Service may make appropriate allocations between the buyer and the seller to reflect an arm's length price.[46] If this issue were to arise with respect to a maquiladora, it would involve a Mexican entity inflating the cost of items

sold to the related American entity in an effort to increase the American entity's cost of goods sold, which in turn would reduce its net income. As stated above, most Mexican maquiladoras are cost centers rather than profit centers; thus, there is little attempt to shift income to the Mexican entity.

If a transfer pricing issue does arise, the required analysis focuses on a determination of the arm's length price.[47] The regulations prescribe three methods of determining an arm's length price and the standards for applying each method.[48] The three methods are the comparable uncontrolled price method, the resale price method, and the cost-plus method. The regulations further provide that the three methods should be used in the order stated; thus, resort to the second method should only be had if there are no comparable uncontrolled sales, and the third method should only be used if neither the first nor the second method is available.[49]

The comparable uncontrolled price method requires that the arm's length price of a controlled sale be equal to the price paid in comparable uncontrolled sales, subject to certain ascertainable adjustments for the "quality of the product, terms of sale, intangible property associated with the sale, time of the sale," and the market in which the sale takes place.[50] If such adjustments are not ascertainable, this method can not be used.[51] "Uncontrolled sales are sales in which the seller and the buyer are not members of the same controlled group," and include "(a) sales made by a member of the controlled group to an unrelated party, (b) sales made to a member of the controlled group by an unrelated party, and (c) sales made in which the parties are not related to each other."[52]

If the comparable uncontrolled price method is not appropriate, the resale price method must be considered. The theory behind the resale price method is to determine the buyer's (reseller's) gross profit percentage (markup) on resales of similar property purchased from an unrelated entity.[53] The resale price method is generally not appropriate if the buyer (reseller) has "added more than an insubstantial amount of value to the property by physically altering the property before resale."[54] Additionally, the following factors should be considered when determining whether similar purchases and resales are comparable—

(a) the type of property involved in the sale; (b) the functions performed by the buyer with respect to each product; (c) the effect on price of any intangible property utilized by the reseller in connection with the property resold; and (d) the geographic market in which the functions are performed by the buyer.[55]

Although maquiladoras almost always involve labor intensive work, including processing and assembling which, by their very nature, add more than an insubstantial value to the property, the resale price method could be appropriate if the maquiladora sells its products to its parent which resells them on the United States market without further processing, i.e., in effect acting merely as a distributor. The focus would be on the first uncontrolled sale outside of the controlled group. From this sales price would be subtracted an appropriate markup (determined from the parent's resales of products purchased from unrelated entities, or from information from other persons selling comparable products) to determine an appropriate transfer price between the maquiladora and the parent.

If neither the comparable uncontrolled price method nor the resale price method is available, however, the regulations direct the consideration of the use of the cost plus method. Under this method, "the arm's length price of a controlled sale of property shall be computed by adding to the cost of producing such property, an amount which is equal to such cost multiplied by the appropriate gross profit percentage, plus minus the appropriate adjustments."[56] Thus, the method determines the appropriate gross profit percentage for the related party sales by determining the seller's cost of production and adding to such cost the gross profit percentage earned on similar sales to unrelated parties, or earned by other persons selling comparable products. The same types of factors considered in determining comparability of sales for the resale price method should be considered with respect to comparability of sales for the resale price method should be considered with respect to comparability of sales for the cost plus method.[57]

The regulations further provide that if none of the three methods outlined above is appropriate, then some other appropriate method, or variation of such methods, may be used.[58] Of course, no guidance with respect to other methods or variations of the above methods is provided.

Given the nature of the maquiladora industry, the Mexican company will probably be providing all of its products to its United States parent. Thus, the ability to rely on the comparable uncontrolled price method would depend upon whether the United States parent purchased comparable products from unrelated entities, or whether there were comparable sales involving totally unrelated entities. If the comparable uncontrolled price method is unavailable, then the resale price method may be used to determine the appropriate transfer price, if the parent sells the the product without further processing. Otherwise, the government would be forced to relay on the cost plus method.

C. Intercompany Services

As a general rule, "when one member of a group of controlled entities performs marketing, managerial, administrative, technical, or other services for the benefit of, or on behalf of another member of the group without charge," or at less than an arm's length charge, the Internal Revenue Service may make appropriate allocations to reflect an arm's length charge.[59] Given the close relationship between most American entities and their Mexican maquiladoras, and that most maquiladoras are operated as cost centers, it is very common for American companies to provide administrative and managerial services to their maquiladoras. In such situations, the Internal Revenue Service may attempt to allocate an arm's length charge for the services provided by the American company to its maquiladora.

The regulations provide that "an arm's length charge for services rendered shall be the amount which was charged or would have been charged for the same or similar services in independent transactions with or between unrelated parties under similar circumstances."[60] The regulations further provide that, "except in the case of services which are an integral part of the business activity of either" of the parties involved, "the arm's length charge is deemed to be the amount of the costs or deductions incurred with respect to such services, unless the taxpayer establishes a more appropriate charge."[61] Services are considered to be an "integral part of the business activity" if either the provider or the recipient "is engaged in the trade or business of rendering similar services to one or more unrelated parties,"[62] or if the provider "renders services to one or more related parties as one of its principal activities."[63] When the "amount of an arm's length charge for services is determined with reference to the costs or deductions incurred with respect to such services," all direct and indirect costs associated with such services must be taken into account.[64] If the taxpayer has "allocated and apportioned costs or deductions to reflect arm's length charges . . . in a consistent and reasonable manner which is in accord with sound accounting practices," such method will be allowed.[65]

Allocations for services may also be made with respect to services performed for the "joint benefit of the members of a group of controlled entities."[66] In such a case, the allocation should be made in accordance with the "relative benefits intended from the services," without the aid of hindsight.[67] However, no allocation is to be made if the expected benefits to the other members of the group were so remote that "unrelated entities would not have charged for such services."[68] Furthermore, the regulations provide that an allocation will generally not be necessary if the service is merely a duplication of a service which the related party has independently performed or is performing for itself.[69]

The Internal Revenue Service may also disallow expenses for services paid by the United States parent which are for the direct benefit of the Mexican subsidiary under the general principles of I.R.C. §162. For example, assume that a United States corporation pays the salary of a manager who is employed by, and spends all of his time providing management services to, the corporation's wholly owned Mexican maquiladora. It would be difficult to argue that incurring expenses for the benefit of another entity is either ordinary or necessary for the American company, as required for deductibility under section 162.[70] This issue will be addressed further below in the context of the I.R.C. §1059A discussion.

D. Payment of Intercompany Expenses

Intercompany services are not the only expenses which may be incurred by the domestic entity on behalf of foreign related entities. Given the nature of the maquiladora industry and the assumptions relied upon herein, the domestic entity will control, for the most part, both the resources and the decision-making of its maquiladora. Inevitably, the domestic entity will incur and deduct traditional operating expenses, such as professional services, insurance, travel, supplies, maintenance, and utilities, which benefit the Mexican company.

Expenses incurred by a domestic company on behalf of its maquiladora may be challenged by the Internal Revenue Service under either I.R.C. §482 or §162. As stated above, the theory behind section 482 is to determine what the income and expenses of members of controlled groups of taxpayers would have been had such members dealt with each other at arm's length. At arm's length, taxpayers simply do not pay the expenses of other taxpayers. Under section 482, the Internal Revenue Service could either allocate the deduction to the entity who benefited from it, or impute income to the entity who erroneously deducted it, with a corresponding allocation of the deduction to the other party.[71]

As stated with respect to intercompany services, the Internal Revenue Service may choose to disallow the deductions under I.R.C. §162. Business expenses must be both

ordinary and necessary to be deductible. The payment of someone else's debt is simply not an "ordinary" expense.[72]

E. Intercompany Use of Tangible Assets

Problems can arise with respect to the transfer of equipment and other tangible assets from the domestic entity to its controlled Mexican company. If the domestic company owns equipment and allows the Mexican company to use it either at less than fair market value or at no charge, the Internal Revenue Service may use section 482 to impute lease income to the domestic company at an arm's length rate.[73]

Additional problems can arise if domestic companies claim depreciation with respect to assets purchased by them, but used by their Mexican controlled corporation. I.R.C. §167 allows a deduction for the reasonable allowance for the exhaustion, wear and tear of property used in a trade or business or of property held for the production of income. In a maquiladora context, the first hurdle in establishing an entitlement to a depreciation deduction is proving that the assets are used in the American company's trade or business. If the assets are only being used by the Mexican subsidiary in its trade or business, then there should be no depreciation deduction for the American company.

If it can be established that the assets are used in the American company's trade or business, but are still located abroad, the depreciation deduction may be limited by I.R.C. §168(g). Section 168(g) provides, in pertinent part, that the depreciation deduction allowed by section 167 for property used predominantly outside the United States during the taxable year is subject to the alternative depreciation system set forth in section 168(g)(2), which would generally call for straight line depreciation over a twelve-year period.

F. Intercompany Receivables

The transfer and sale of goods and services between related entities often creates receivables between such related entities. The maquiladora industry is no exception. Any time there are receivables or loans between two or more related entities, issues can arise with respect to imputed interest on such receivables and loans. The section 482 regulations provide that where one member of a group of related entities "makes a loan or advance directly or indirectly to, or otherwise becomes a creditor of, another member of the group and either charges no interest or charges interest at a rate which is" below an arm's length rate, the Internal Revenue Service may make appropriate allocations to reflect an arm's length rate of interest.[74] The regulations provide that the Internal Revenue Service may impute an appropriate rate of interest with respect to loans or advances of money, and with respect to "indebtedness arising in the ordinary course of business from sales, leases, or the rendition of services by or between members of the group."[75]

The regulations generally provide that interest should be imputed from the day after the indebtedness arises until the day it is satisfied.[76] However, with respect to intercompany trade receivables involving a foreign debtor, "interest is not required to be charged until the first day of the [fourth month] following the month in which the receivable arises."[77] The regulations also provide that if it is an industry practice to allow longer periods to run before charging interest on similar transactions, then such longer period will be allowed.[78] The regulations also provide a safe harbor rate between the "applicable federal rate" (determined under I.R.C. §1274(d)) and 130% of the applicable federal rate.[79]

Thus, assuming there are no advances or other typical loans between the domestic entity and its related maquiladora, which are typically avoided in the maquiladora industry because of Mexican withholding requirements, imputed interest on intercompany trade receivables can be avoided by repaying such receivables in less than four months.

G. Transfer of Intangibles

The Tax Reform Act of 1986 amended, I.R.C. §482 by adding the following sentence, "In the case of any transfer (or license) of intangible property (within the meaning of section 936(h)(3)(B)), the income with respect to such transfer or license shall be commensurate with the income attributable to the intangible."[80] Prior to the amendment of section 482, the Internal Revenue Service relied on the principles espoused in the section 482 regulations.[81]

The regulations provide that where intangible property or an interest therein is transferred, sold, assigned, loaned, or otherwise made available by one member to another member of a controlled group of corporations for other than an arm's length consideration, the Internal Revenue Service may make necessary allocations to reflect an arm's length consideration.[82] The regulations generally provide that the standard to be applied in determining the amount of an arm's length consideration is the amount that would have been paid by an unrelated party for the same intangible property under the same circumstances.[83] If there is no comparable transaction involving an unrelated taxpayer, then the regulations provide specific factors to be considered in arriving at the amount of an arm's length consideration.[84]

The standard set forth in section 482 looks to the income to be derived from the transfer of the intangible as indicative of arm's length consideration. Prior case law focused on the amount that an unrelated buyer would have paid for the same rights in the intangible without sufficient consideration of all of the terms and conditions surrounding the transfer. Although there are no current regulations interpreting the amendment to section 482, the legislative history provides meaningful insight. The Ways and Means Committee report explaining the House version of the bill provides that one of the factors to be considered in determining the profit potential of the intangible transferred is that "extent to which the transferee bears real risks with respect to it ability to make a profit from the intangible, or, instead, sells products produced with the intangible largely to related parties . . . and has a market essentially dependent on, or assured by, such related parties' marketing efforts."[85] Additionally, the committee report explains that the most important factor is the "profit or income stream generated by or associated with intangible property."[86] Another important change is that hindsight will now be an appropriate factor in the analysis.[87] In other words, the new law is intended to cause the parties to analyze the payments being made over time, requiring appropriate adjustments for changes in the income attributable to the intangible. The inquiry is no longer limited to the facts in existence at the time of the transfer.

Unfortunately, there are no current guidelines to comply with the amendment to section 482. Furthermore, given the large number of U.S. companies which have shifted their manufacturing and processing operations to Mexico and other foreign countries, and the degree to which technology plays a part in such manufacturing and processing, it is impossible to forecast the impact of this amendment to section 482. Congress clearly believed there was a problem in the way the section 482 regulations handled the transfer of intangibles, and enacted the amendment to section 482 to tighten the rules. It will be left to the courts to provide the final analysis.

IV. CORRELATIVE ADJUSTMENTS UNDER I.R.C. §482 AND I.R.C. §1059A

A. Correlative Adjustments

As stated above, whenever the Internal Revenue Service makes a section 482 adjustment to the income of one member of a group of controlled taxpayers, it must also make appropriate correlative adjustments to any other members of the group related to the allocation.[88] The regulations provide that the correlative adjustment shall actually be made if the U.S. income tax liability of the other member(s) of the group would be affected for any pending taxable year. A pending taxable year is defined as "any taxable year with respect to which the U.S. income tax return of the other member has been filed by the time the allocation is made, and with respect to which a credit or refund is not barred by the operation of law."[89] Even "if a correlative adjustment is not actually made," it shall "be deemed to have been made for the purpose of determining" that member's "U.S. income tax liability in a later year, or for the purposes of determining the U.S. tax liability of any other person for any taxable year."[90]

The regulations also provide that the correlative adjustment is not to be made until there is some degree of finality with respect to the primary section 482 adjustment. Under the regulations, the correlative adjustment should not be made until the earliest of the following events involving the primary adjustment:

(a) the date of assessment of the tax following execution by the taxpayer of a Form 870 (Waiver of Restriction on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment) with respect to the adjustment;

(b) acceptance of a Form 870–AD (Offer of Waiver of Restriction on Assessment and Collection of Deficiency in Tax And Acceptance of Overassessment);

(c) payment of the deficiency;

(d) stipulation in the Tax Court of the United States; or

(e) final determination of tax liability by offer in compromise, closing agreement, or court action.[91]

B. I.R.C. §1059A

Section 1059A was enacted as part of the Tax Reform Act of 1986 to limit an importer's basis in inventory to the value of the imported goods claimed for customs purposes.[92] Section 1059A provides that where property is imported into the United States in a transaction (directly or indirectly) between related persons (within the meaning of section 482), the amount of any costs taken into account in determining basis or inventory costs by the purchaser which are also taken into account in computing the customs value of such property, shall not exceed such customs value. "Customs value" is defined as the value taken into account for purposes of determining the amount of any duties imposed on the importation of property.[93] "Import" is defined as the entering or withdrawal from a warehouse for consumption, except as otherwise provided in the regulations.[94]

The regulations provide that section 1059A does not apply to items or portions of items which are not subject to duty.[95] Likewise, section 1059A is inapplicable if the customs duty on property is not based on value; thus, this section is inapplicable if the customs duty is based on volume or if there is a per item duty.[96] The regulations also make it clear that section 1059A has no application if the customs value is greater than the inventory cost; section 1059A is not a two way street.

The regulations recognize that there may be certain costs which are properly included in the cost of inventory which are not included in the customs value. These include costs for freight, insurance, expenses incurred after importation (such as construction, erection, assembly or technical assistance), and any other costs properly included in inventory cost under I.R.C. §§471 and 263A.[97]

The regulations expressly state that neither section 1059A nor the section 1059A regulations limit in any way the authority of the Internal Revenue Service to make adjustments to inventory costs under section 482 or any other section of the code.[98] A more difficult question, which is not specifically answered in the regulations, is whether the Internal Revenue Service can use section 1059A to limit the benefit of a correlative adjustment. For example, assume that, under section 482, the Internal Revenue Service allocates deductions for salaries which a parent corporation paid to an employee of its Mexican subsidiary from the parent to the subsidiary and, as a correlative adjustment, treats the subsidiary as having paid or incurred those salaries. The subsidiary, a maquiladora, operates on a cost plus basis, i.e., the amount which the parent pays the maquiladora for processing its widgets is equal to the maquiladora's total costs plus a certain percentage of those costs. Therefore, any excess costs which it would incur would normally be passed up to the parent corporation in the price the parent paid for the processing of widgets.

Without the limitations of section 1059A, the utilization of section 482 and the correlative adjustment should create a wash, and possibly a benefit, with respect to the domestic parent's U.S. tax liability, because any decrease in salaries expense will be offset, through the correlative adjustment and the cost-plus arrangement, by an increased cost the parent is paying its subsidiary for the widgets. Thus, salaries expense may decrease, but the cost of goods sold will increase, presumably by that amount plus the cost-plus arrangement. The question is whether section 1059A will limit the ability of the domestic parent to utilize the benefit of the correlative adjustment.

The section 1059A regulations provide that a taxpayer is bound by the finally determined customs value and by every final determination made by the United States Customs Service, including the determination of dutiable value.[99] The customs value is considered to be finally determined, and all United States Customs Service determinations are considered final, when liquidation of the entry becomes final.[100] Liquidation generally occurs ninety days after notice of liquidation to the importer, unless a protest is filed. If a protest is filed, the customs value is considered to be finally determined either when a decision by the Customs Service with respect to the protest is not contested or when a decision of the Court of International Trade becomes final.[101]

The Internal Revenue Service may argue that the finality of the customs value precludes adjustment of the inventory cost resulting from a section 482 correlative adjustment. By the time a correlative adjustment would be required, the customs value would likely be final, and the regulations under section 1059A are explicit that the finally determined customs value controls.

The taxpayer may counter-argue that with a maquiladora, where the Mexican corporation is passing along all of its costs to its domestic counterpart, no section 482 adjustment should be made in the first instance because there is no attempt to evade taxes and the adjustment is not needed to clearly reflect income. Although the statute appears to require either an attempt to evade taxes or the necessity for an adjustment to clearly reflect income, the regulations expressly do not.[102] The courts have followed the regulations.[103] Transactions involving related entities will be closely scrutinized, and the aim of section 482 is to prevent the shifting of net incomes of controlled taxpayers by placing them on a parity with uncontrolled taxpayers.

Questions may arise concerning the potential interplay between section 482 correlative adjustments and the section 1059A limitations with respect to deductions disallowed under I.R.C. §162. As discussed above, expenses must be both ordinary and necessary to be deductible under I.R.C. §162, and the service may successfully argue that it is not ordinary for one taxpayer to pay the expenses of another. Although no correlative adjustment is required with respect to deductions disallowed under I.R.C. §162, the domestic parent may argue that it should be able to recharacterize the disallowed expenses as part of its cost of purchasing inventory from the maquiladora, or of having the maquiladora assemble or manufacture the inventory. Consequently, the parent would contend that its cost of goods sold should be increased by the amount of the disallowed deductions. The service might respond as follows:

(1) The expenses cannot be recharacterized as part of the parent's cost of goods sold because they were not paid as such. They are at most contributions to the maquiladora's capital, which would at most increase the basis of its stock in the parent's hands; and

(2) Even if the expenses could be so recharacterized, I.R.C. §1059A would prohibit the parent from taking them into account in calculating its cost of goods sold if they were not included in the declared dutiable value of the inventory imported from the maquiladora.

Thus, I.R.C. §1059A may apply to an adjustment under I.R.C. §162.

The potential conflict between I.R.C. §§482 and 1059A will be unavoidable, however, with respect to transfer pricing allocations or any imputations of income under section 482. Although the service will likely rely on I.R.C. §1059A to limit the use of the correlative adjustment, the issue has yet to be decided by any court.

V. I.R.C. §1504(D) ELECTION

Generally, a foreign corporation may not be included in an affiliated group of corporations for the purpose of filing a consolidated return.[104] However, a domestic corporation may elect to include a wholly owned subsidiary incorporated in a contiguous country (Mexico or Canada) in the consolidated return group if such wholly owned subsidiary is "maintained solely for the purpose of complying with the laws of such country as to title and operation of property."[105] Including a Mexican subsidiary in a consolidated return group could be beneficial if it would allow the affiliated group to offset its income by the Mexican subsidiary's start-up losses. The I.R.C. §1503(d) limitation on dual consolidated losses must, however, be considered.[106]

Whether a Mexican subsidiary formed as part of the maquiladora industry is maintained solely for the purpose of complying with the laws of Mexico as to title and operation of property was considered by the Internal Revenue Service in General Counsel Memorandum 38,119 (October 1, 1979) and Private Letter Ruling 81-25-143 (March 27, 1981) which answered that question in the negative. General Counsel Memorandum 38,119 involved a U.S. corporation, Corp P, establishing a wholly-owned Mexican corporation, Corp S, to participate in the Mexican Border Industrialization Program under Mexican law near the U.S. border. According to the memorandum, Corp S was established partly to comply with the laws of Mexico as to title of property and partly to receive the benefits as maquiladora. The memorandum stated that the "maintained solely" requirement in section 1504(d) required the taxpayer to establish that foreign incorporation would not have been maintained "but for" the need to comply with the laws of Mexico or Canada as to title or operation of property. General Counsel Memorandum 38,119, relying on Revenue Ruling 71-523,[107] concluded that Corp S was not qualified to make a section 1504(d) election because it was formed partially to gain benefits under the Mexican Border Industrialized Program, and not solely for the purpose required by the statute.

Likewise, in Private Letter Ruling 81-25-143, the Internal Revenue Service determined that the Mexican subsidiary involved therein did not qualify for the section 1504(d) election because it was maintained partly for its status as a maquiladora. The private letter ruling also relied upon Revenue Ruling 71-523, which involved a Canadian corporation incorporated to apply for a grant under the Canadian Program for Advancement of Industrial technology. Under Canadian law, the grant was only available to Canadian corporations. The revenue ruling concluded that since the Canadian corporation was not formed solely to comply with Canadian laws as to title and operation of property, the corporation was not eligible to make the section 1504(d) election.

Thus, the Internal Revenue Service has expressly taken the position that corporations formed to benefit from the maquiladora program are not eligible for the section 1504(d) election. Whether a Mexican maquiladora may avail itself of the section 1504 election has, however, been somewhat clouded, in *U.S. Padding Corp. v. Commissioner*,[108] the issue was whether a Canadian corporation, formed to facilitate the purchase by a U.S. corporation of the assets of a Canadian manufacturing concern, qualified for the section 1504(d) election. Although there was no law which required the formation of a Canadian corporation to purchase the assets, the U.S. company was advised that incorporation of the Canadian company was essential to avoid delaying agency recommendation for approval of the acquisition, and the government offered no evidence to challenge such fact. The United States Tax Court, relying on treasury regulations applicable to years prior to 1966 and the legislative history of section 1504(d), concluded that the term:

"Laws of such country . . . include[s] not only explicit constitutional or statutory provisions and explicit rules and regulations prescribed by controlling authorities, but also any existing practice or policy of such

foreign country which results in a domestic corporation finding it necessary to maintain its foreign business and properties as a foreign corporation in order to operate in that country." [109]

On appeal, the Commissioner of Internal Revenue conceded that existing practice or policy could be incorporated into the term "laws of such country." The Sixth Circuit, after noting that because of the government's concession of the legal issue, the issue on appeal was purely factual, affirmed the Tax Court's decision, holding that "there is ample evidence to show that 'but for' incorporation, Trans Canada would not have been allowed to operate in Canada." [110]

In a maquiladora case, however, the disposition of this issue would focus on the reasons for forming or acquiring the Mexican corporation. If the Mexican corporation was formed or acquired to qualify for the maquiladora and/or debt substitution programs, then the section 1504(d) election should fail because the Mexican corporation would not have been formed solely to comply with Mexican laws as to title and operation of property. The issue raised in *U.S. Padding Corp.* (i.e., whether an administrative practice or procedure can qualify as a "law") should be irrelevant to this determination.

VI. CONCLUSION

This article has provided a discussion of the tax issues associated with debt/equity swaps as well as many of the United States income tax issues associated with the operation of maquiladoras, including I.R.C. §482 concerns involving transfer pricing, intercompany services, intercompany expenses, intercompany receivables, and the intercompany use of tangible and intangible assets, the impact of I.R.C. §1059A on correlative adjustments under I.R.C. §482, and the I.R.C. §1504(d) contiguous country election. There are clearly other United States tax issues which could surface in the formation and operation of maquiladoras, which have not been addressed in this article.[111]

FOOTNOTES

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The views and opinions expressed in this article are solely those of the authors. They do not necessarily represent the positions or policies of the Internal Revenue Service, of the Office of Chief Counsel, or of the Austin District Counsel.

[1] Matilde K. Stephenson, *Mexico's Maquiladora Program: Challenges and Prospects*, 22 ST. MARY'S L.J. 589, 590 (1991).

[2] KPMG Peat Marwick, Maquiladora Industry Development Incentives (November 1, 1990) (unpublished manuscript on file with the *St. Mary's Law Journal*).

[3] Internal Revenue Service, Maquiladora 9 (June 1989) (on file with the *St. Mary's Law Journal*); Matilde K. Stephenson, *Mexico's Maquiladora Program: Challenges and Prospects*, 22 ST. MARY'S L.J. 589, 590–91, 594–95 (1991).

[4] U.S. DEP'T OF COMMERCE, NORTH AMERICAN FREE TRADE AGREEMENT: GENERATING JOBS FOR AMERICANS 3, 7, 8 (May 1991).

[5] *Id.* at 5.

[6] *Id.* at 49–50.

[7] *Id.* at 50.

[8] U.S. DEP'T OF COMMERCE, NORTH AMERICAN FREE TRADE AGREEMENT: GENERATING JOBS FOR AMERICANS 50 (May 1991).

[9] *Id.* at 50–51.

[10] *Id.* at 51, 53 n.3. One estimate is that maquila plants purchase ninety-seven percent of their production raw materials, supplies, and components from U.S. sources. Matilde K. Stephenson, *Mexico's Maquiladora Program: Challenges and Prospects*, 22 ST. MARY'S L.J. 589, 592 (1991).

[11] U.S. DEP'T OF COMMERCE, NORTH AMERICAN FREE TRADE AGREEMENT: GENERATING JOBS FOR AMERICANS 50 (May 1991).

[12] Angelo C. Falcone, *Mexico's In-Bond Manufacturing Program U.S. Tax Considerations After the 1986 Tax Act*, 65 TAXES 211, 212 (1987).

[13] KMPG Peat Marwick, KPMG Peat Marwick Guide to Mexico's Maquila Program 27 (1989) (unpublished manuscript, on file with the *St. Mary's Law Journal*); Douglas Alexander, Legal Aspects of Foreign Investment in Mexico 5 (1988) (unpublished manuscript, on file with the *St. Mary's Law Journal*).

[14] Maquiladoras also operate through "Shelter Plans." In a shelter arrangement, the U.S. corporation contracts with an independently (usually Mexican) owned maquiladora operation for the assembly or manufacturing labor. The U.S. corporation generally provides the production technology and equipment; the maquiladora operation provides the labor and factory space. This article does not consider arrangements of this type, although they present federal income tax considerations of their own.

[15] *See* Christopher Gottscho, Note, *Debt-Equity Swap Financing of Third World Investments—Will the I.R.S. Hinder U.S. Swappers?*, 8 VA. TAX REV. 143, 143 (1988).

[16] *Id.* at 144 n.5, 153 n.34.

[17] Christopher Gottscho, Note, *Debt-Equity Swap Financing of Third World Investments—Will the I.R.S. Hinder U.S. Swappers?*, VA. TAX REV. 143, 164 (1988); Bufete Sepulveda, S.C., Memorandum on Capitalization of Credits of the United Mexican States 3 (October 1986) (on file with the *St. Mary's Law Journal*).

[18] Christopher Gottscho, Note, *Debt-Equity Swap Financing of Third World Investments—Will the I.R.S. Hinder U.S. Swappers? 8* VA. TAX REV. 143, 164 (1988); Angulo, Calvo, Enriquez y Gonzalez, S.C., Mexican Public Foreign Debt-Equity Conversion Program 2, 4, 5 (undated memorandum, on file with the *St. Mary's Law Journal*); Bufete Sepulveda, S.C., Memorandum on Capitalization of Credits of the United Mexican States 6–8, 11–12, (October 1986) (on file with the *St. Mary's Law Journal*).

[19] Christopher Gottscho, Note, *Debt-Equity Swap Financing of Third World Investments—Will the I.R.S. Hinder U.S. Swappers?*, VA. TAX REV. 143, 159 n.51 (1988); Bufete Sepulveda, S.C., Memorandum on Capitalization of Credits of the United Mexican States 6–7 (October 1986) (on file with the *St. Mary's Law Journal*).

[20] OPERATING MANUAL FOR THE CAPITALIZATION OF LIABILITIES AND REPLACEMENT OF PUBLIC DEBT WITH INVESTMENT 20 (trans., Ritch, Rovzar y Heather, S.C., 1986) (on file with the *St. Mary's Law Journal*); Bufete Sepulveda, S.C., Memorandum on Capitalization of Credits of the United Mexican States 10 (October 1986) (on file with the *St. Mary's Law Journal*); Angulo, Calvo, Enriquez y Gonzalez, S.C., Mexican Public Foreign Debt-Equity Conversion Program 4 (undated memorandum, on file with the *St. Mary's Law Journal*).

[21] OPERATING MANUAL FOR THE CAPITALIZATION OF LIABILITIES AND REPLACEMENT OF PUBLIC DEBT WITH INVESTMENT 4 (trans., Ritch, Rovzar y Heather, S.C., 1986) (on file with the *St. Mary's Law Journal*).

[22] *Id.* exhibit A.

[23] These funds accrue interest at the treasury certificate (CETES) rate while in the account, being thereby protected from currency inflation.

[24] Rev. Rul. 87–124, 1987–2 C.B. 205.

[25] *See generally* Gregory v. Helvering, 293 U.S. 465, 469 (1935).

[26] Penrod v. Commissioner, 88 T.C. 1415, 1428 (1987).

[27] Smith v. Commissioner, 78 T.C. 350, 389 (1982).

[28] Esmark, Inc. v. Commissioner, 90 T.C. 171, 195 (1988), *aff'd*, 886 F.2d 1318 (7th Cir. 1989).

[29] It would appear somewhat oxymoronic for the taxpayer to rely on the doctrine and thereby argue that the form of his own transaction does not correspond to its substance. Whether the taxpayer can successfully do so is discussed in the next section.

[30] *Esmark*, at 195, 198; Rev. Rul. 83–142, 1983–2 C.B. 68 (doctrine inapplicable where "each step demonstrates independent economic significance, is not subject to attack as a sham, and was undertaken for valid business purposes").

[31] *See* Christopher Gottscho, Note, *Debt-Equity Swap Financing of Third World Investments—Will the I.R.S. Hinder U.S. Swappers?*, 8 VA. TAX REV. 143, 160–71 (1988).

[32] The annual rate of inflation in Mexico has fallen from 160 percent in 1987 to 30 percent in 1990. U.S. DEP'T OF COMMERCE, NORTH AMERICAN FREE TRADE AGREEMENT: GENERATING JOBS FOR AMERICANS 5 (May 1991).

[33] Commissioner v. National Alfalfa Dehydrating & Milling Co., 417 U.S. 134, 149 (1974)(citations omitted).

[34] Higgins v. Smith, 308 U.S. 473, 477 (1940).

[35] *E.g.*, FNMA v. Commissioner, 90 T.C. 405, 417–21, 426–27 (1988), *aff'd on other grounds*, 896 F.2d 580 (D.C. Cir. 1990), *cert. denied*, —U.S. —, 111 S.Ct. 1619, 113 L.Ed.2d 717 (1991). The taxpayer argued that transactions which in form were the origination of new mortgages and the payoff of old mortgages pursuant to resales of the mortgaged property, or to refinancings of the old mortgages, in substance constituted exchanges of the old for the new mortgages, upon which gain or loss should be recognized. The court refused to allow the taxpayer to "attack the form of [the] transactions," and "recharacterize them by hindsight, and after it conceived that a tax advantage could be obtained." *Id.* at 426–27.

[36] *See* Christopher Gottscho, Note, *Debt-Equity Swap Financing of Third World Investments—Will the I.R.S. Hinder U.S. Swappers?*, 8 VA. TAX REV. 143, 171–74, 173 n.122.

[37] *See id.* at 174–76.

[38] I.R.C. §118(a).

[39] Treas. Reg. §1.118–1 (1956).

[40] *Id.* For example, in *White, Inc. v. Commissioner*, 55 T.C. 729 (1971), *aff'd*, 458 F.2d 989 (3d Cir. 1972), *cert. denied*, 409 U.S. 876 (1972), the Tax Court held that a contribution made by the Ford Motor Company to induce a dealer to relocate was not a capital contribution within the meaning of I.R.C. §118 because Ford made the payment in order to increase the sales of its product, and to enhance its image by having the dealership located in a better neighborhood and in a more attractive and better-equipped building. *See also* United States v. Chicago, Burlington & Quincy R.R. Co., 412 U.S. 401, 413 (1973) (property "may not be compensation, such as direct payment for a specific, quantifiable service provided for the transferor by the transferee").

[41] The above discussion assumes a contribution by a nonshareholder, i.e., the Mexican government. The argument could be made, however, that the contribution is in reality from the parent to the maquiladora, i.e., a shareholder contribution, which Treas. Reg. §1.118–1 makes *per se* untaxable to the maquiladora, and I.R.C. §351 makes untaxable to the parent. I.R.C. §367 would apply, however, to an I.R.C. §351 exchange in which a United States person transfers property to a foreign corporation, so that the foreign corporation would not be considered a corporation for purposes of determining the extent to which gain is recognized on the transfer. I.R.C. §367 does provide a number of exceptions, however, which may apply in specific situations.

[42] Commissioner v. First Security Bank, 405 U.S. 394, 400 (1972); Treas. Reg. §1.482–1(b)(1) (as amended in 1968).

[43] Fitzgerald Motor Co. v. Commissioner, 508 F.2d 1096, 1102 (5th Cir. 1975), *aff'g* 60 T.C. 957 (1973).

[44] Phillips Bros. Chem., Inc. v. Commissioner, 435 F.2d 53, 57 (2d Cir. 1970), *aff'g* 52 T.C. 240 (1969); Ach v. Commissioner, 42 T.C. 114, 125 (1964), *aff'd*, 358 F.2d 342 (6th Cir. 1966).

[45] Treas. Reg. §1.482–1(d)(2) (as amended in 1968).

[46] Treas. Reg. §1.482–2(e)(1)(i) (as amended in 1988). An arm's length price is defined as the price that an unrelated party would have paid under the same circumstances for the property involved in the sale. *Id.*

[47] Given the limited applicability of transfer pricing issues to maquiladoras, the discussion of transfer pricing is limited to an overview of the regulations. A complete discussion of transfer pricing must, however, include a review and analysis of the relevant case law.

[48] Treas. Reg. §1.482–2(e)(i)(ii) (as amended in 1988).

[49] *Id.*

[50] Treas. Reg. §1.482–2(e)(2)(ii) (as amended in 1988).

[51] *Id.*

[52] *Id.*

[53] Treas. Reg. §1.482–2(e)(3)(i) (as amended in 1988).

[54] Treas. Reg. §1.482–2(e)(3)(ii)(c) (as amended in 1988).

[55] Treas. Reg. §1.482–2(e)(3)(vi) (as amended in 1988).

[56] Treas. Reg. §1.482–2(e)(4)(i) (as amended in 1988).

[57] Treas. Reg. §1.482–2(e)(4)(iii) (as amended in 1988).

[58] Treas. Reg. §1.482–2(e)(1)(iii) (as amended in 1988).

[59] Treas. Reg. §1.482–2(b)(1) (as amended in 1988).

[60] Treas. Reg. §1.482–2(b)(3) (as amended in 1988).

[61] *Id.*

[62] Treas. Reg. §1.482–2(b)(7)(i) (as amended in 1988).

[63] Treas. Reg. §1.482–2(b)(7)(ii)(a) (as amended in 1988). The regulations provide further guidance with respect to determining whether services are an inte-

gral part of a business. *See* Treas. Reg. §1.482-2(b)(7)(ii)–(iv) (as amended in 1988).

[64] Treas. Reg. §1.482-2(b)(4)(i) (as amended in 1988).

[65] Treas. Reg. §1.482-2(b)(6)(i) (as amended in 1988).

[66] Treas. Reg. §1.482-2(b)(2)(i) (as amended in 1988).

[67] *Id.*

[68] *Id.*

[69] Treas. Reg. §1.482-2(b)(2)(ii) (as amended in 1988).

[70] Interstate Transit Lines v. Commissioner, 319 U.S. 590 (1943); *see also* Young & Rubicam, Inc. v. United States, 410 F.2d 1233 (Cl. Ct. 1969) (court disallowed under section 162 deductions by a United States parent for salaries paid to its employees for periods of time when they were detailed to foreign subsidiary corporations). It should be noted that there are no correlative adjustments with respect to expenses disallowed under I.R.C. §162. An I.R.C. §482 allocation may be necessary, however, when an individual who is employed and paid by the parent spends all or a substantial portion of his time providing services to the maquiladora. In this situation, the service may not disallow the parent's deduction for the employee's compensation, but may allocate fee income to the parent, and a correlative deduction to the maquiladora, in the amount of the portion of the employee's compensation attributable to the performance of services for the latter.

[71] *See* Treas. Reg. §1.482-1(d)(2) (as amended in 1968).

[72] Welch v. Helvering, 290 U.S. 111, 114 (1933).

[73] Treas. Reg. §1.482-2(c) (as amended in 1988).

[74] Treas. Reg. §1.482-2(a)(1)(i) (as amended in 1988).

[75] Treas. Reg. §1.482-2(a)(1)(ii) (as amended in 1988). Indebtedness arising in the ordinary course of business from sales, leases or the rendition of services by or between members of the group are referred to as intercompany receivables.

[76] Treas. Reg. §1.482-2(a)(1)(iii)(A) (as amended in 1988).

[77] Treas. Reg. §1.482-2(a)(1)(iii)(C) (as amended in 1988).

[78] Treas. Reg. §1.482-2(a)(1)(iii)(D) (as amended in 1988).

[79] Treas. Reg. §1.482-2(a)(2)(iii)(B) (as amended in 1988).

[80] Tax Reform Act of 1986, Pub. L. No. 99-514, §1231(e)(1), 100 Stat. 2085, 2562-63 (codified at 26 U.S.C. §482). Section 1231(g)(2)(B) provides that the amendments made by Act §123(e) apply to taxable years beginning after December 31, 1986, with respect to transfers after November 16, 1985 or licenses granted after that date.

[81] Treas. Reg. §1.482-2(d) (as amended in 1988).

[82] Treas. Reg. §1.482-2(d)(1)(i) (as amended in 1988).

[83] Treas. Reg. §1.482-2(d)(2)(ii) (as amended in 1988).

[84] Treas. Reg. §1.482-2(d)(2)(iii) (as amended in 1988).

[85] H.R. Rep. No. 426, 99th Cong., 2d Sess., at 426 (1986).

[86] *Id.*

[87] *Id.* at 425.

[88] Treas. Reg. §1.482-1(d)(2) (as amended in 1968).

[89] *Id.*

[90] *Id.*

[91] *Id.*

[92] Tax Reform Act of 1986, Pub. L. No. 99-514, §1248(c), 100 Stat. 2085, 2584.

[93] I.R.C. §1059A(b)(1) (codified at 26 U.S.C. §1059A).

[94] I.R.C. §1059A(b)(2).

[95] Treas. Reg. §1.1059A-1(c)(1) (1989).

[96] *Id.*

[97] Treas. Reg. §1.1059A-1(c)(2) (1989).

[98] Treas. Reg. §1.1059A-1(c)(7) (1989).

[99] Treas. Reg. §1.1059A-1(d) (1989).

[100] *Id.*

[101] *Id.*

[102] Treas. Reg. §1.482-1(c) (as amended in 1968).

[103] *See, e.g.*, Fitzgerald Motor Co. v. Commissioner, 508 F.2d 1096, 1102 (5th Cir. 1975) *aff'g* 60 T.C. 957 (1973); Asiatic Petroleum Co. v. Commissioner, 79 F.2d 234, 236 (2d Cir. 1985), *cert. denied*, 296 U.S. 645 (1935); Foster v. Commissioner, 80 T.C. 34, 138 (1983), *aff'd*, 756 F.2d 1430 (9th Cir. 1985).

[104] I.R.C. §1504(b)(3).

[105] I.R.C. §1504(d).

[106] I.R.C. §1503(d). Internal Revenue Code section 1503(d) generally provides that, subject to certain exceptions, a dual consolidated loss of a domestic corporation (including a foreign corporation treated as a domestic corporation under section 1504(d)), incurred after 1986, cannot be allowed to reduce the taxable income of any other member of the consolidated group for that or any other taxable year. *Id.* A dual consolidated loss is a net operating loss of a domestic corporation incurred in a year in which the corporation is a dual resident corporation. *Id.* A domestic corporation is a dual resident corporation if the worldwide income of such corporation is subject to tax in a foreign country, or such corporation is subject to the income tax of a foreign country on a residence basis. *Id.*

[107] Rev. Rul. 71-523, 1971-2 C.B. 326.

[108] 88 T.C. 177 (1987), *aff'd*, 865 F.2d 750 (6th Cir. 1989).

[109] *Id.* at 187-88.

[110] *U.S. Padding Corp.*, 865 F.2d at 751.

[111] Issues under I.R.C. §263A, referred to as the "uniform capitalization rules," could surface if a United States company claims depreciation with respect to equipment used by its maquiladora, or if a United States company pays expenses of its maquiladora which are either directly or indirectly associated with the manufacturing or processing of property for sale. I.R.C. §263A generally requires the capitalization as a part of inventory of all direct and indirect costs incurred with respect to the manufacturing or production of products for sale or resale.

Finally, the operation of a maquiladora could trigger subpart F (I.R.C. §§951 through 964) issues. Subpart F was designed primarily to prevent United States taxpayers from using related entities in tax haven countries to defer or avoid United States income taxes. As Mexico is not a tax haven country and as most maquiladoras do not involve the attempt to shift income to the maquiladora, most of the subpart F issues should be avoided, although certain issues may arise with respect to debt/equity swaps. I.R.C. §956, however, which creates deemed dividends to shareholders of controlled foreign corporations with respect to the increases in the foreign corporation's investment of its earnings in the United States, may be a trap for the unwary.

MEXICO'S BANK PRIVATIZATION GAMBLE

(By Scott B. MacDonald)

A frenzied group of buyers, powerful rival groups competing for the same prizes, and a run-up in the Mexican stock exchange constituted some of the excitement over the privatization of Mexico's 18 banks. The process rolled to an end in July 1992, when the Mexican government sold its last majority ownership in a bank. Although shares in three banks have been kept by the government, the period of state control over the banking sector that commenced with the nationalization in 1982 is over.

The price tag for the transformation from state to private ownership was a surprising US$12 billion, well beyond initial expectations of US$6 to $8 billion. But it would be wrong to think that the excitement is over concerning Mexico's banking sector. The newly privatized banks now face a challenging future that includes the trials and tribulations of universal banking, the need to upgrade services, and the prospect of eventually being thrown into the deep water of competition with Canadian and U.S. banks when a North American Free Trade Agreement (NAFTA) is finally ratified by the respective legislative bodies.

The Salinas administration's bank privatization program is part of a major gamble in the country's march from developing-country status to membership in the Organization of Economic Cooperation and Development (OECD)—often referred to as the industrialized countries' club. Mexico has already indicated a strong interest in joining the OECD. Membership implies a greater degree of liberalization of the economy, including the financial sector. While Mexico is moving rapidly in this direction, it has yet to attain the levels found in most OECD countries. This implies the need for further changes—which carry potential risks as well as rewards.

This risk-versus-reward schema is evident in the dynamics of the Mexican political economy. While under state control, the Mexican banks were more easily manipulated for the purposes of monetary policy. The threat of failure was not a serious consideration as it was expected that the state would intervene in propping up a troubled institution. Privatization opens the door to competition, and with that comes greater pressure for loan-making and other related problems. Mexico's bank regulators, economic policymakers and the public now face a new range of questions: Will the Mexican government be willing to prop up a private institution? When are Mexican banks regarded as too big to fail? Will the intermixture of commerce and banking found in the conglomerate nature of Mexican finance lead to the possibility of one sector's pulling another sector down if the economy hits another recessionary track? At the same time, foreign competition is needed to enhance local market efficiency with an eye to improving services to the consumer. Are Mexican banks up to foreign competition? In gambling on Mexican bank privatization, the Salinas administration hopes to repudiate developing-nation status and thereby fend off the criticisms of those who think that such an action is converting Mexico into a "casino economy" (an economy based on speculation).

Prior to 1982 Mexico's banks were usually owned by large industrial groups or conglomerates. The banks usually enjoyed considerable influence in the economy (especially through relations with the Central Bank and Treasury Ministry) and played a critical role as the nation's payments system and allocator of capital. With the exception of Citibank, which gained access to the local market in 1929, Mexico's banks had little foreign competition and liked it that way. The powerful position of Mexico's bankers, however, drew criticism from the national-populist wing of the ruling Institutional Revolutionary Party (PRI).

The Mexican economy in the early 1980s was hit by falling oil prices and rising interest rates which, by August 1982, caused external debt payment problems. At the same time, addressing the evolving economic crisis had resulted in banking speculation and explosive capital outflows. For the national-poplists, who had the ear of President José López Portillo (1976–1982), strong measures were required to rein in the bankers and bring the situation under control. Moreover, the national-populists were concerned with the growing inequalities in Mexican society which they perceived as partially the fault of the bankers. It was felt that the bankers had a tendency to facilitate capital outflow, which in turn meant less capital for local investment.

The Mexican economy's drastic slippage led López Portillo to nationalize the country's banking sector in September 1982 and to impose foreign exchange controls for the first time in history. The major exception to this was Citibank's operations in Mexico, which were left untouched.

Nationalization of Mexico's banks was to prove ephemeral. When López Portillo handed the presidential sash over to Miguel de la Madrid in 1982, an unsuspecting Mexico was on the edge of a period of far reaching and still-unfinished economic restructuring. De la Madrid soon opened up Mexico's trade regime by reducing tariffs and joining GATT, augmenting public sector income through tax reform and higher prices for public sector goods and services, and reorganizing the public administration to enhance efficiency. Additionally, from 1983 to 1987, the Mexican government sold, liquidated or transferred to private hands 130 state-owned firms and liberalized laws concerning majority ownership for foreign investment in pharmaceuticals,

tourism, hydrocarbon technology, computers and technology.

Privatization of the banking sector, however, remained a sensitive political issue and had to wait until the Salinas administration (1988-1994). By 1989, the Mexican government was ready for financial sector reform. This was because the impetus toward a North American free-trade area with Canada and the United States demanded a more competitive banking sector. Additionally, pro-market reformers were clearly in command of the government policymaking; the reform process, although not irreversible at this stage, had momentum.

A number of legislative initiatives to restructure Mexico's financial system were passed in the Mexican Congress in December 1989 and 1990 that set the stage for the privatization of the country's banks. Other new regulations enacted limited individual ownership of a holding company to 10 percent, institutional investors to a maximum of 15 percent, and aggregate foreign ownership to 30 percent.

A crucial element of the new legislation was a provision allowing the formation of private financial groups. Private financial groups can be formed, and they have option to own various types of financial intermediaries and provide integrated financial services. Mexican banks could not function in this capacity as universal banks, which allowed them to offer a wide menu of financial services ranging from insurance and securities trading to deposit taking. Mexico's adoption of the universal banking model made this sector more akin to the overwhelming majority of OECD countries (including Canada) than that of the United States.This model makes clear distinctions about non-bank owners being prohibited from owning a bank and in general does not allow banks to sell securities or insurance.

The Mexican privatization process moved forward in September 1990 when a Bank Divestiture Committee was formed to estimate the value of the banks. This was followed in February 1991 by the publication of the privatization rules. The privatization process entailed five steps. First the Bank Divestiture Committee examined the proposals of interested bidders. This was followed by interviews with prospective buyers, followed by interviews with prospective buyers, followed by the compilation of a list of definitive candidates to participate in the bank securities auction. In the fourth stage the approval participants submitted bids. The fifth and final stage was the culmination of the process in which the government announced the new owners of the bank.

The highest bidder was the winner except in those cases where two or more bids were within 5 percent of each other. At that stage the government would make the determination based on both the amount bid as well as the quality of the prospective management and their business plan. One last stipulation was that to guarantee the bidding process' confidentiality and the intent of interested parties to buy the bank, a down payment of 30 billion pesos (roughly US$10 million) was required as a sign of good faith. Payment was made in the form of 28-day treasury bills at the Nacional Financiera. Foreigners were excluded from the process. Despite the Salines administrations' efforts to liberalize the Mexican economy, the political sensitivity of allowing the banking sector to be bought by foreigners remained.

In June 1991, the first of the 18 banks was sold to the Mexican private sector. In little over a year, in early July 1992, with the sale of a controlling 66.3 percent stake in Banco del Centro for US$280 million completed, the government announced that the privatization of the banking sector was over.

The process had not been entirely smooth. The intense bidding for the banks and the sealed-bid nature of the operational side complicated matters as exemplified by the sale of Banco Mexicano Somex in March 1992. The fierce competition for bank ownership led to a situation in which a group of investors supported both in winning and second-place bid. The victorious group won with a bid of US$845 million, which was close to 29 times the medium-sized bank's 1991 earnings. A number of investors then withdrew, claiming that the price was too high. The runner-up bid then was accepted with some of the same investors in the first bid. At the same time, the investors in the first group, led by Eduardo Creel Cobian, forfeited a US$16 million deposit. This naturally resulted in cries of foul play. Despite that incident, it was widely agreed that the privatization process was free of corruption and string-pulling evidence in other developing country programs.

The Mexican government has not entirely divested its ownership of the banking sector as of mid-1992; it retains an 8.8 percent stake in the banking system by holding shares of Bancomer, Banco Serfin and Banco Internacional. These shares are expected to eventually be sold.

The privatization of banks was highly lucrative for the Mexican government. CS First Boston, one of the privatization advisers, projected that earnings would be around US$8 billion; other firms such as Barings' predicted US$6 billion. The amount raised was instead US$12 billion as the Mexican private sector demonstrated a strong appetite for regaining formal control over the nation's banks.

IMPLICATIONS OF BANK PRIVATIZATION

The privatization of Mexico's bank was a bold, yet necessary act on the part of the Salinas government. At the same time, the action implies a number of concerns for Mexican bankers, their holding company owners, government bank regulators, the central bank (El Banco de Mexico) and foreign investors. Mexican banks currently have high operating costs and overemployment due to recent government control, and they are weak in technology and strategic planning. A number of bank analysts question whether the newly privatized institutions will have the necessary capital to proceed with plans to improve communications and computerization critical for future competitiveness. The potential shortage of capital is derived from the usually inflated prices paid by the new owners. This was evident when the buyers of Mexico's largest bank, Bancomer, had difficulty raising the US$2.55 billion they paid for controlling interests.

Another implication of Mexico's bank privatization was its impact on the stock market. Mexico's bank privatization captured the attention of international investors looking for high-yield investments in developing countries. The unexpected windfall from the banks reinforced confidence in the Mexican economy and helped stimulate a boom in the Mexican stock exchange that lasted until June 1992 when negative comments about NAFTA by then-not-declared U.S. presidential candidate Ross Perot triggered a 15 percent fall in the stock index. While bank stocks rose on the basis of their privatizations, foreign investors examined other sectors for opportunities or put their money into Mexican companies traded on the New York Stock Exchange, such as Vitro and TELMEX.

The future of Mexican banking will be determined by the sector's ability to become more competitive in an internationalized local market. In a sense, by opting to privatize, the Salinas administration let the financial genie out of the bottle. It will be difficult to put the genie back into the bottle of state ownership and a protected market.

The internationalization of the Mexican banking sector is already in motion. In July 1992, as part of a push to complete the free-trade agreement with Canada and the United States, it was agreed that Mexico would open the banking, insurance and securities industries to companies from those two countries. Mexican banks already are active in the U.S. market and have branches there. But with the exception of Citibank, foreign banks have been largely precluded from doing business in Mexico. The deal would gradually eliminate protective barriers for the Mexican banking sector by January 1, 2000, allowing U.S. and Canadian banks to own insurance, banking and securities firms.

Mexico's initial stance in the NAFTA talks was for a phase-out of 20 to 30 years. This clashed with the position taken by U.S. financial firms that wanted a one-year phase-out. The compromise is a reflection by the Mexican government of the need to upgrade its financial sector, but it also plays to nationalist concerns that the country's banks, insurance and securities companies could all eventually be owned by U.S. and, to a lesser extent, Canadian interests. An additional caveat is that if U.S. and Canadian businesses purchase sizeable market shares between the years 2000 and 2004, a three-year moratorium can be applied and the Mexican government will have the authority to reject bids by foreign companies to acquire Mexico's largest banks. This deal, however, hinges on the passage of the entire NAFTA agreement.

Mexico is also under pressure to open its banking system to non-North American countries. Spanish banks, in particular *Banco Santander*, are strongly interested in participating in the Mexican market. In July 1992 the issue of providing access to Spanish banks was discussed between officials of the two countries at the Ibero-American summit in Madrid.

Because of the greater pressure to develop a more internationalized and competitive banking sector, Mexican banks can expect a round of mergers and acquisitions. Guillermo Ortiz, head of the Mexican government's Bank Divestiture Committee, commented in July 1992: "I don't think it's been indispensable that there exist a great number of banks in order for there to be healthy competition. For example, in Canada there are a reduced number of banks." Canada's banking system is dominated by six large institutions and several smaller banks. Along these lines, there have been rumors of Mexican regional banks exploring the possibility of merging to pool their resources to compete with the local industry giants; Bancomer, Banamex and Banca Serfin and, eventually, foreign banks.

The merger and acquisition process is not likely to occur in the short term in Mexico. Mexican authorities are still waiting to let some of the dust settle from the major round of privatizations. Moreover, they still have plans to sell off their remaining shares. It would make little sense to trigger doubts in the market with mergers and acquisitions which could push prices down. Another factor is that mergers and acquisitions have a potentially ugly side—enhanced efficiency often means personnel cuts. Unemployment remains a sensitive political issue and could

be used by opponents of the economic reform process.

WILL THE GAMBLE PAY OFF?

The way forward for Mexican banking post-privatization is perilous. Mexico's banks have been protected by government-erected barriers and have room for improvement in terms of offerings to the Mexican consumer. At the same time, Mexico's top banks are highly competitive, possess cadres of experienced financiers, and are capable of surviving in an internationalized market. Nor are Mexico's banks alone in having to compete in a marketplace less defined by international borders—their counterparts in the United States, Canada, Asia and Europe are confronting many of the same challenges.

The Mexican government is, therefore, gambling that the privatization of the banking sector will advance the process of the country's transformation from developing country status to OECD membership, reinforcing the reform process. In finance, it would force Mexican banks to meet the higher Bank of International Settlements (BIS) capital adequacy standards and international accounting standards. This would provide a safer and sounder banking system for the Mexican consumer and offer a better investment environment for both local and foreign investors.

The return of a privately owned banking sector also has political implications. The Salinas government has sought to democratize the nation's capital and avoid too great a concentration of financial clout in a few hands, a problem which factored in the 1982 nationalization. The banks are now beyond the government's direct control. This reflects Salinas' willingness to bet that the newly recreated financial groups will not embark upon a speculative frenzy and push Mexico along the path of a casino economy characterized by wheeling and dealing of the few to the disadvantage of the many. Complaints are already being made that some of the families that dominated the system prior to 1982 have returned and that some of Mexico's most powerful businessmen sit on bank boards. Sensitive to questions about the government's stated goal of distributing the nation's financial power more democratically, Guillermo Ortiz countered in July 1992: "In 1982, we talked about how the total number of investors in banking was on the order of 8,000 people. Now it is considerably more, 80,000." The government has also been quick to point out that bank employees have also been offered opportunities to share in ownership.

Mexico now stands at a critical crossroads on its economic development. One path leads to OECD membership and the other offers a loss of momentum and developing-country status quo. The OECD path presents a difficult, but not impossible, challenge. It does imply a willingness to adopt measures such as privatization of the banking sector and eventually an opening to foreign competition that are likely to cause dislocation in the short term.

The way forward for Mexico is going to be difficult and problematic. The potential for slippage exists in areas such as controlling the current account balance of payments, reducing inflation and rooting out corruption. The timing of reforms is also critical—too rapid a pace could create a negative political backlash; too slow could cause the process to mire down in bureaucratic politics and personal, fractional and party rivalries, and induce foreign and local investors to turn elsewhere. In this light, the privatization of banks was a step forward, but the slow pace of opening up a foreign competition is likely to prove a hindrance to the goals of creating a more efficient and prudent banking system. Further reforms are required so that Salinas can achieve his often-stated goal of exporting more goods than people.

(Scott B. MacDonald is an official of the Office of the Comptroller of the Currency. The views expressed here are solely his own and do not necessarily reflect those of that agency or any part of the U.S. government.)

MEXICO'S LARGEST BANKS AND STANDING IN THE WORLD'S TOP 500 BY ASSET SIZE WITH A COMPARISON TO SELECTED BANKS

[In billions of U.S. dollars as of Dec. 31, 1991]

Bank	Rank	Asset size
Dai-Ichi Kangyo Bank (Japan)	1	446.2
Citibank	29	161.1
Royal Bank of Canada	44	111.4
Banco do Brasil	75	70.0
National Bank of Greece	148	39.2
Banco Nacional de México	154	30.5
Bancomer	158	29.8
Banca Serfin	199	20.0
Banco do Estado de São Paulo	306	13.5
Turkiye Commhurtyeti Ziraat Bankasi (Turkey)	371	10.5
Banco de la Nacion Argentina	378	10.3
Banco Bradesco (Brazil)	393	9.7
Commercial Bank of Greece	423	8.8
Banco Itau (Brazil)	461	8.0
Multibanco Comermex	463	7.9

Source: American Banker: July 27, 1992. Annual Survey of the World's Top 500 Banks. Excludes holding companies.

FUND TO MOVE COMPANIES TO MEXICO

(By Keith Bradsher)

WASHINGTON, February 16.—In a development that has inflamed opposition to the North American Free Trade Agreement, entrepreneurs in New York and Mexico have established in investment fund whose announced purpose is to buy small American manufacturing companies and move them to Mexico to take advantage of lower wages there.

The Mexican Government's largest industrial development bank is a "significant investor" in the venture, according to a prospectus distributed today by Richard A. Gephardt, the House Majority leader, a leading opponent of the trade pact.

"Funds such as this should not be allowed to operate," Mr. Gephardt said in a letter to President Carlos Salinas de Gortari of Mexico. "But even more objectionable is the official participation of entities controlled by your Government in stealing American jobs."

POWERFUL OBSTACLE

Likely job losses to Mexico are already the most potent political obstacle to Congressional approval of the the trade agreement, which would eliminate most barriers to trade and investment among Canada, Mexico and the United States. President Clinton has endorsed the agreement, pending negotiation of side agreements on labor, the environment and surges in imports as tariffs are reduced.

A senior American trade official said this evening that Mickey Kantor, the United States trade representative, would discuss the fund on Wednesday morning as his first meeting with Jaime Serra Puche, Mexico's trade minister. "Any Government-subsidized program to steal American jobs would not be tolerated by this Administration," the official said.

The Mexican Embassy had no comment on the prospectus last night.

Even without the Nafta, Mexicans may already buy American companies in many industries and legally move them to Mexico, while Americans can buy Mexican companies in some industries and move them here.

The Mexican Government's involvement in the fund, known as the AmeriMex Maquiladora Fund L.P., is particularly awkward for the Clinton Administration. In his election campaign, President Clinton strongly criticized a foreign aid program that provided financial incentives for American companies to move to Central America.

The prospectus said the fund's organizers are trying to raise $50 million they would use to buy 9 to 13 companies. But critics of the free trade pact cited the prospectus as evidence for their contention that many American companies would move south if the trade pact is approved.

Pat Choate, the director of the Manufacturing Policy Project, a Washington group that is seeking more protection from imports for ailing manufacturing industries, said that the fund could be the first in a wave of cross-border financial transactions to rival the leveraged-buyout boom during the 1980's, and that "hundreds of thousands" of American jobs would be lost.

The Mexican Government's involvement in the fund, "couldn't possibly be a worse move," said Representative Charles E. Schumer, a Brooklyn Democrat. "I hope the Mexican Government is better at economics than they are at American politics."

The fund "is wonderfully revealing of the attitudes behind the enthusiasm for the Nafta," said Tom Donohue, the secretary-treasurer of the AFL–CIO, which opposes the pact.

But most academic studies have predicted that the pact would create more American jobs than it would destroy or send to Mexico because jobs added in Mexico would ultimately mean more demand for American goods. More than two thirds of Mexico's imports come from the United States.

Lynn Martin, who was then the Labor Secretary, testified before the Senate Finance Committee in September that the pact could cost 150,000 American jobs, but she predicted that these losses would be more than offset by additional jobs in factories shipping extra goods to Mexico.

The prospectus estimated that manufacturing companies now paying $7 to $10 an hour to their workers, in the United States can pay Mexican workers just $1.15 to $1.50 an hour. By moving to Mexico, the companies would save $10,000 to $17,000 per employee each year, excluding relocation costs, the prospectus said.

The fund would buy companies with annual sales of $10 million to $100 million, move them to Mexico within a year and a half, and then resell the company after three to eight years.

CLINTON FACES HURDLES ON NAFTA

(By Harry Bernstein)

Maybe Ross Perot didn't derail the "fast-tracked" North American Free Trade Agreement, but it was hit a telling blow when he succinctly warned there would be a "giant sucking sound of jobs being pulled out of this country" into Mexico if NAFTA is not killed by Congress.

Perot's catchy, widely quoted phrase used during the presidential debates neatly summarized the problem. Many fear that the proposed agreement between the United States, Mexico and Canada will mean the transfer to Mexico of hundreds of thousands of jobs we and the Canadians badly need.

However, a few clever lines won't kill the agreement that President Clinton says he wants if it can be adequately modified to cut our own job losses and somehow ease the pain those losses will surely cause.

Clinton has some intriguing plans to try to get approval of the treaty by modifying its effect, but they may fail since our continuing high unemployment is increasing opposition.

Going for him are powerful corporate and political forces in the United States, Canada and Mexico that are waging a propaganda war against what they damn as "protectionism." They want to get congressional approval of the treaty with few changes. As it stands, it amounts to a favor to corporations. The treaty would reduce tariffs, and that sounds fine, but it would also encourage U.S. companies to speed the shift of jobs to Mexico.

Fighting that is an impressive array of opponents to the treaty that was signed Dec. 17 by the heads of the governments of the United States, Mexico and Canada. Its "fast-track" status means Congress can dump it but not simply amend it to make it more palatable.

Clinton could win approval of the treaty by weakening the opposition if he can get side agreements with Mexico and "implementing legislation" from Congress. He and his aids are trying several tactics to do just that.

One is to take advantage of the furious political battles in Mexico. Clinton aides are sure that Mexico's President Carlos Salinas de Gortari will make significant side-agreement concessions to help the treaty win congressional approval.

Salinas' term is up next year, and he is said to be almost desperate to have the treaty in effect before then so his conservative party that has won every presidential election for more than 60 years can prevail again.

If NAFTA passes, Salinas figures that it will mean a burst of new jobs from the United States and Canada and a flurry of new economic investment that will boost the Mexican stock market.

That good news for Mexico may help Salinas' party defeat a key opponent, the progressive Cuauhtemoc Cardenas, who strongly opposes the agreement and claims only a fraudulent election gave Salinas a victory in the last election.

So Clinton is expected to push Salinas to raise slightly Mexico's minimum wage of about 65 cents an hour and to at least promise to enforce that country's anti-pollution and worker-protection laws, which, while as good or better than our own, are generally ignored.

Those concessions by Salinas might, only in theory, reduce Mexico as a magnet attracting U.S. companies and thus reduce opposition to the treaty here.

Next, Clinton wants Congress to pass implementing legislation to ease the pain U.S. workers will suffer unless NAFTA is drastically altered. That could involve such obvious measures as more job retraining and extended unemployment benefits.

It could also include laws such as one giving U.S. workers the right to take legal action to force U.S. companies doing business in Mexico to abide by what Clinton believes will be Mexico's strengthened labor and environmental laws.

Another part of his strategy is said to be, in effect, an effort to "buy off" NAFTA opponents, as one critic put it. For instance, he is already pushing his plan to let Vice President Al Gore lead a vigorous campaign to toughen our own environmental rules to at least mollify powerful congressional critics such as House Majority Leader Richard Gephardt, who sees Mexico pulling down our environmental standards.

Then Clinton hopes to reduce labor's vehement opposition to the treaty by pressing Congress to help unions reach several of their goals.

He has already promised to push for a law to ban the permanent replacement of strikers. He probably will advocate mild labor law reforms to take away some of the tremendous advantages management now has in fighting for a "union-free" environment.

Also, Clinton is expected to appoint government agency administrators who will reverse the anti-union policies of the Reagan-Bush years and strengthen enforcement of health and safety laws.

Make no mistake about it, U.S. companies are ready to shift more jobs to Mexico. In a recent Wall Street Journal survey, more than 40% of 455 U.S. business executives said they are likely to shift some production to Mexico if NAFTA is ratified. A quarter of them said they plan to use the threat of a Mexico move as a bargaining chip to get concessions from unions.

Many U.S. labor leaders believe that Clinton will push Congress for NAFTA approval with or without their support. They believe that their best course is to negotiate with him as an ally to get, as one put it, "the best deal we can through the compromise the President wants."

But others, such as William Bywater, head of the International Union of Electrical Workers, are scornful of compromises they believe will not stem the flow of jobs to Mexico.

He says many unions and their allies are planning massive demonstrations across the country against NAFTA.

If opponents of the treaty do put pressure on Clinton with massive public demonstrations and get help from leaders such as Gerhardt and Perot, they could derail the treaty former President Bush and his aides concocted to help corporate America, regardless of the harm it does to workers.

MEMORANDUM, FEBRUARY 5, 1993

This is an interesting article on Banks in Mexico.

The North South Center at the University of Miami that puts this magazine out is conservative in its political perspective. The guy that wrote the article also works for the Comptroller of the Currency.

The article includes some interesting information though on the privatization of banks in Mexico and on the North American Free Trade Agreement:

Maybe the most interesting is the July 1992 agreement as part of NAFTA that will give foreign banks operating in Mexico the ability to own insurance and securities firms as well as banking firms. Will this mean that the restrictions in the U.S. that keep banks here out of insurance and securities industries will be "barriers to trade" and have to be lifted? The specter of this sort of back-door de-regulation through such trade agreements, specifically NAFTA, has also been raised regarding health standards, environmental controls, and labor protections.

Another concern that the privatization of banks in Mexico raises is the possibility of increased speculation, turning the Mexican economy into a high-risk "casino-economy".

Newly privatized Mexican banks are also running into operational problems, because they were sold for much more than they were worth, leaving them short on capital.

Bank mergers also seem to be a real possibility in Mexico, which would run into the same problems as here in the U.S., namely concentration of control and loss of jobs.

There is also the danger that privatization will only lend toward a further concentration of wealth in Mexico, exacerbating social inequity.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

WASHINGTON, DC,
February 22, 1993.

Hon. THOMAS S. FOLEY,
Speaker, House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: This is to notify you pursuant to Rule L (50) of the Rules of the House I have been served with a subpoena issued by the United States District Court for the District of Massachusetts.

After consultation with my General Counsel, I have determined that compliance with the subpoena is not inconsistent with the privileges and precedents of the House.

With great respect, I am

Sincerely yours,

DONNALD K. ANDERSON,
Clerk, House of Representatives.

PERMISSION TO PRINT PROGRAM AND REMARKS OF MEMBERS AT WREATH-LAYING CEREMONY FOR OBSERVANCE OF GEORGE WASHINGTON'S BIRTHDAY

Mr. GONZALEZ. Mr. Speaker, I ask unanimous consent that the proceedings and the remarks of the two Members representing the House of Representatives, the gentlewoman from Virginia [Mrs. BYRNE] and the gentleman from Virginia [Mr. GOODLATTE], at the wreath-laying ceremony at the Washington Monument for the observance of George Washington's birthday held today be inserted in today's CONGRESSIONAL RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The text of the program and speeches are as follows:

WREATH-LAYING CEREMONY TO CELEBRATE PRESIDENT GEORGE WASHINGTON'S 261ST BIRTHDAY ANNIVERSARY, FEBRUARY 22, 1993

Opening: Arnold Goldstein, Superintendent, National Capital Parks-Central, National Park Service.

Presentation of the Colors: Joint Armed Services Color Guard, Military District of Washington.

"The National Anthem": United States Navy Band, Chief Mark Cochran, Director.

Welcome: Robert G. Stanton, Regional Director, National Capital Region, National Park Service.

Remarks: Honorable James W. Symington, Vice President, Washington National Monument Society.

Remarks: Honorable Jack Evans, D.C. City. Council, Ward 2.

Remarks: Honorable Herbert S. Cables, Jr., Acting Director, National Park Service.

Remarks: Honorable Robert W. Goodlatte, U.S. House of Representatives, 6th District, Virginia.

Remarks: Honorable Leslie L. Byrne, U.S. House of Representatives, 11th District, Virginia.

Musical Selection: Stevens Elementary School Glee Club and Bell Ringing Choir, Sharon L. Strange, Director, Shunda Yates, Soloist.

PRESENTATION OF WREATHS

Wreath of the House of Representatives: Honorable Robert W. Goodlatte; Honorable Leslie L. Byrne; and Escorted by Arnold Goldstein, Superintendent.

Wreath of the Washington National Monument Society: Honorable James W. Symington; Escorted by Kevin Hawkins; Student Representative Junior Citizens Corps, Inc.

Wreath of the National Park Service: Acting Director Herbert S. Cables, Jr.; Escorted by Arnold Goldstein.

Taps and Retiring of the Colors: Joint Armed Services Color Guard.

Conclusion: Arnold Goldstein.

REMARKS BY HON. BOB GOODLATTE

As a representative of the Commonwealth of Virginia, I'm deeply honored to have the opportunity to pay homage to our greatest native son, George Washington.

George Washington touched the life of every American of his time and continues to do so today. The Father of our Country is known for his military leadership in our struggle for independence and of his strong support for the creation of our democratic institutions and, of course, for the leadership of those institutions as our first president. But we should also acknowledge some other, simpler ways that his legacy still touches us and about which we pay less heed. For example in my congressional district he left his mark on education and the environment.

In 1798 after leaving office as President he bestowed economic security upon Liberty Hall, a struggling college in Lexington, Virginia by granting the school the largest gift up to that time in the history of American education—securities valued at $50,000, an enormous sum in those days. That school, now known as Washington and Lee University still derives income from that gift. Students at the oldest American university off the Atlantic seaboard still benefit from Washington's farsighted commitment to education.

In Washington's own youth we find his love of the outdoors and his commitment to preservation. As a surveyor who explored much of southwest Virginia he recorded the natural beauty of the area and left his mark at Natural Bridge in Rockbridge County, one of the natural wonders of the world.

Volumes have been written, and rightly so, about Mr. Washington's achievements. Clearly, he was a man of wisdom, intelligence, and administrative ability. He was an innovative farmer, great diplomat, great general and a great President. Yet I believe the key to Washington's successes were the personal qualities he brought to each new challenge.

He was a great general, not because of his strategic or tactical genius, but because of his dogged determination, raw courage, and inspiring leadership. He took a ragtag, unpaid Continental Army with old equipment, no formal training, and small numbers and defeated a British Army which was the envy of the world.

It was Washington's courage which led the way across the icy Delaware River to victory at Trenton. It was Washington's willingness to sacrifice with his men and their love and respect for their commander which held the army together during the endless winters at Valley Forge and Morristown. It was his unquestioned integrity and wisdom which led to Washington's unanimous selection to be our first President.

This notion owes much to his simple, yet powerful and enduring beliefs about government. "Let the reins of government be braced and held with a steady hand and every violation of the Constitution be reprehended," he said.

Today after this ceremony, we will tour the Washington Monument. My memory of this impressive monument is intensely personal. As a young child, I remember coming to Washington on a family vacation, listening to my dad tell me about our nation's great heritage and about the greatest American, George Washington, after whom our capital city was named. I'm sure many of you here this morning have similar memories of a family vacation to our capital.

The monument, as grand as it is, does not alone capture the real memory and meaning of George Washington. For this we must look to the values and truths that guide our nation. Washington is synonymous with freedom, democracy, and with a country called the United States of America which for over 200 years has provided the world with, to use Mr. Washington's own words, "* * * The fairest prospect of happiness and prosperity that ever was presented to men."

May each of us always strive to keep it that way because by preserving this great country, we honor George Washington's memory more than any ceremony can ever do.

REMARKS OF HON. LESLIE BYRNE

I am greatly honored to be here today, to represent my colleagues in the United States House of Representatives, as we pay homage to the nation's first president.

A colleague suggested when he heard I had been chosen for this honor that General Washington would turn over in his grave, to have a Virginia woman as a member of Congress, honoring him today. I don't believe that!

George Washington was a revolutionary. Whether designing a new plow or a new government, he was unwilling to accept the status quo. I believe he would see my standing here today, as the first congresswoman from Virginia, as the natural evolution of the revolution he began.

We have just participated in an election where a major issue was whether government could be a positive force, or whether government is inherently part of the problem.

Please remember George Washington was now what we call a career politician. He believed that government could and should make a positive difference. From his time in the Virginia House of Burgesses until his retirement from the presidency he dedicated his life to making country, government, and the people's lives better.

I believe today he would be pleased that the government he helped create, defended, and led, continues to grow and change and work for the American people. The people in turn believe and hope our government can do better than in the past.

George Washington not only fomented the revolution, he led the revolution; and when he saw the failure of the Confederation he helped lead the creation of the Constitution. The very same Constitution, honored over 200 years later as one of the greatest documents in history. Having created the government, he rejected a crown and led as an elected sovereign. He might have succumbed to the allure of power and stayed in office, but he rejected government by an individual for responsible government of the people. He believed in democratic government.

As a Virginian, I am proud to stand here today at the base of a monument dedicated to Virginia's best. I realize, however, that this farmer, surveyor, soldier, politician, and leader belongs to the whole country. I hope you will appreciate him as we do in Virginia.

Think of him not as a Gilbert Stuart portrait or as a marble statue. Rather think of him as an innovative farmer with dirt on his hands, looking from his beloved Mount Vernon to the flowing Potomac. As a popular story-telling member of the House of Burgesses, cracking walnuts between his powerful fingers in a tavern in Williamsburg. Or as a frightened young man leading his troops back from Braddock's debacle.

Then remember this grown man honored by his nation, preserving his new government be providing the first peaceful transition of power in the history of the world, whose every action was a precedent for how we conduct our nation's government. It is no wonder that, then as today, George Washington is first in peace, first in war, and first in the hearts of his countrymen.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. GONZALEZ) to revise and extend their remarks and include extraneous material:)

Mr. BONIOR, for 60 minutes each day, today and on February 23, 24, and 25.

Mr. WATERS, for 60 minutes each day, on March 3, 10, 17, 24, and 31.

Ms. ENGLISH, for 5 minutes, on February 23.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

(The following Members (at the request of Mr. THOMAS of Wyoming) and to include extraneous material:)

Mr. LEWIS of California.

Mr. KOLBE.

(The following Members (at the request of Mr. GONZALEZ and to include extraneous material:)

Mr. NATCHER.

Mr. KLECZKA.

Mr. DIXON.

Mr. GONZALEZ in 10 instances.

Mr. BROWN of California in 10 instances.

Mr. CLEMENT.

ENROLLED BILLS SIGNED

Mr. ROSE, from the Committee on House Administration, reported that that committee had examined and found truly enrolled bills of the House of the following titles, which were therefrom signed by the Speaker:

H.J. Res. 101. Joint resolution to designate February 21 through February 27, 1993, as

"National FFA Organization Awareness Week."

ADJOURNMENT

Mr. GONZALEZ. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 1 o'clock and 19 minutes p.m.) the House adjourned until tomorrow, Tuesday, February 23, 1993, at noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

760. A communication from the President of the United States, transmitting notification that a report pursuant to section 507 of Public Law 102-377 will be forthcoming; to the Committee on Armed Services.

761. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting a report involving United States exports to Hong Kong, pursuant to 12 U.S.C. 635(b)(3)(i); to the Committee on Banking, Finance and Urban Affairs.

762. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting a report involving United States exports to Malaysia, pursuant to 12 U.S.C. 635(b)(3)(i); to the Committee on Banking, Finance and Urban Affairs.

763. A letter from the President, Chesapeake and Potomac Telephone Co., transmitting the C&P Telephone Co. statement of receipts and expenditures for the year 1992, pursuant to the act of April 27, 1904, ch. 1628 (33 Stat. 374, 375); to the Committee on the District of Columbia.

764. A letter from the Executive Director, Committee for Purchase From People Who Are Blind or Severely Disabled, transmitting a report of activities under the Freedom of Information Act for calendar year 1992, pursuant to 5 U.S.C. 552(d); to the Committee on Government Operations.

765. A letter from the Director, Office of Financial Management, General Accounting Office, transmitting the fiscal year 1992 annual report of the Comptrollers General Retirement System, pursuant to 31 U.S.C. 9503(a)(1)(B); to the Committee on Government Operations.

766. A letter from the Acting Director, Peace Corps, transmitting notification of the removal of the Inspector General and the Deputy Inspector General, pursuant to Public Law 95-452, section 8E(e) (102 Stat. 2524; to the Committee on Government Operations.

767. A letter from the Comptroller General of the United States, transmitting notification with respect to a request by Independent Counsel Walsh's for a waiver of erroneous overpayments; to the Committee on the Judiciary.

768. A letter from the Chairman, Board of Governors of the Federal Reserve System, transmitting the monetary policy report, pursuant to 12 U.S.C. 225a; jointly, to the Committees on Banking, Finance and Urban Affairs and Education and Labor.

769. A letter from the Assistant Secretary (Civil Rights), Department of Education, transmitting the annual report summarizing the compliance and enforcement activities of the Office for Civil Rights and identifying significant civil rights or compliance problems, pursuant to 20 U.S.C. 3413(b)(1); jointly to the Committees on Education and Labor and the Judiciary.

770. A letter from the Secretary of Labor, transmitting a draft of proposed legislation to extend the emergency unemployment compensation program, and for other purposes; jointly, to the Committees on Ways and Means and Energy and Commerce.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. CLAY: Committee on Post Office and Civil Service. H.R. 20. A bill to amend title 5, United States Code, to restore to Federal civilian employees their right to participate voluntarily, as private citizens, in the political processes of the Nation, to protect such employees from improper political solicitations, and for other purposes (Rept. 103-16). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ANDREWS of Texas (for himself and Mr. BREWSTER):

H.R. 1024. A bill to amend the Internal Revenue Code of 1986 to provide incentives for domestic oil and natural gas exploration and production, and for other purposes; to the Committee on Ways and Means.

By Mr. SCHUMER (for himself, Mr. SENSENBRENNER, Mr. SYNAR, Mr. MAZZOLI, Mr. GIBBONS, Mr. GLICKMAN, Mr. BRYANT, Mr. SAWYER, Mr. STARK, Mr. FAZIO, Mr. STUDDS, Mr. REYNOLDS, Mr. MCDERMOTT, Mr. JACOBS, Mr. MANTON, Ms. PELOSI, Mr. PORTER, Mr. TOWNS, Mr. BERMAN, Mr. BORSKI, Mr. BACCHUS of Florida, Mrs. SCHROEDER, Mr. MORAN, Ms. SLAUGHTER, Mr. FILNER, Mr. BOEHLERT, Mr. HALL of Ohio, Mr. BARRETT of Wisconsin, Mr. SHAYS, Mr. SKAGGS, Mrs. ROUKEMA, Mr. KLEIN, Mr. EVANS, Mr. MINETA, Mr. DERRICK, Mr. LIPINSKI, Mr. KLUG, Mr. ANDREWS of Maine, Mr. DEUTSCH, Mr. EDWARDS of California, Mr. CONYERS, Mr. YATES, Mr. TORRICELLI, Mr. WHEAT, Mr. TUCKER, Mr. ROEMER, Ms. FURSE, Ms. MOLINARI, Ms. BYRNE, Mrs. BENTLEY, Mrs. MALONEY, Mr. CARDIN, Mr. GEJDENSON, Mr. MEEHAN, Mr. FINGERHUT, Mr. SANGMEISTER, Mr. NADLER, Mr. MARKEY, Mr. HUGHES, Mr. DELLUMS, Mr. OWENS, Ms. WATERS, Mr. DE LUGO, Mr. HYDE, Mr. STOKES, Mr. WAXMAN, Mr. DURBIN, Mr. ACKERMAN, Mr. BONIOR, Mr. SERRANO, Mr. COYNE, Mr. LANTOS, Mr. MFUME, Mrs. MORELLA, Ms. DELAURO, Mr. ANDREWS of New Jersey, Ms. NORTON, Mr. FALEOMAVAEGA, Mr. HOAGLAND, Mr. MILLER of California, Mr. REED, Mr. HOYER, Mr. HOCHBRUECKNER, Mr. JOHNSTON of Florida, Mr. SABO, Mr. BROWN of California, Mr. LEWIS of Georgia, Mr. FOGLIETTA, Mr. FRANK of Massachusetts, Mr. GUTIERREZ, Mr. GOSS, Mrs. KENNELLY, Mr. BEILENSON, Ms. KAPTUR, Mrs. MINK, Mr. MATSUI, Mr. FLAKE, Ms. VELÁZQUEZ, Mrs. LOWEY, and Mr. WYNN):

H.R. 1025. A bill to provide for a waiting period before the purchase of a handgun, and for the establishment of a national instant criminal background check system to be contacted by firearms dealers before the transfer of any firearm; to the Committee on the Judiciary.

By Mr. INGLIS:

H.R. 1026. A bill to repeal the first section of Public Law 93-462 to limit departing Members' purchases of office equipment and office furnishings from their district offices; to the Committee on House Administration.

By Ms. WATERS:

H.R. 1027. A bill to amend the Internal Revenue Code of 1986 to provide an incremental investment tax credit to assist defense contractors in converting to nondefense operations; to the Committee on Ways and Means.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 20: Ms. BROWN of Florida, Mr. CLINGER, Miss COLLINS of Michigan, Mr. EDWARDS of Texas, Ms. ENGLISH of Arizona, Mr. FLAKE, Mr. GLICKMAN, Mr. INSLEE, Ms. E.B. JOHNSON, Mr. LAUGHLIN, Mr. PICKETT, Mr. SERRANO, Mr. TAUZIN, Mr. WILSON, Mr. FORD of Tennessee, and Mr. HILLIARD.

H.R. 145: Mr. BURTON of Indiana, Mr. CRAPO, Mr. HUNTER, Mr. LEWIS of Florida, Mrs. VUCANOVICH, Mr. HANCOCK, Mr. DEFAZIO, and Mr. HAYES of Louisiana.

H.R. 157: Mr. GINGRICH.

H.R. 163: Mr. KOLBE and Mr. GINGRICH.

H.R. 349: Mr. BUYER and Mr. LEWIS of Florida.

H.R. 360: Mr. CRAMER, Mr. MCHUGH, Ms. NORTON, Mr. MACHTLEY, Mr. VENTO, Ms. E.B. JOHNSON, Mr. MCCLOSKEY, Mr. ZELIFF, Mr. SPRATT, Mr. HOCHBRUECKNER, Mr. UPTON, and Mrs. UNSOELD.

H.R. 515: Mr. MCDADE, Mr. SENSENBRENNER, Mr. SOLOMON, Mr. MCMILLAN, Mr. ROYCE, Mr. OXLEY, Mr. BAKER of California, Mr. LIVINGSTON, Mr. EWING, Mr. DOOLITTLE, Mr. EVANS, Mr. ZELIFF, Mr. BEREUTER, Ms. MOLINARI, Mr. DE LUGO, and Mr. WYNN.

H.R. 723: Mr. BATEMAN and Mr. HASTINGS.

H.R. 778: Mr. PETERSON of Minnesota, Mr. DERRICK, Mr. SPRATT, Mr. SKEEN, Mr. GORDON, Ms. WOOLSEY, Mr. BAKER of Louisiana, Mr. ENGLISH of Oklahoma, Mr. PETERSON of Florida, Mr. NEAL of North Carolina, Mr. HOBSON, Mr. LIGHTFOOT, Mr. OXLEY, Mr. BEREUTER, Mr. BURTON of Indiana, Mr. PENNY, Mr. EVANS, Ms. DANNER, and Mr. GILLMOR.

H.R. 887: Mr. DELAY, Mr. EMERSON, Mr. CANADY, Mr. YOUNG of Alaska, Mr. GINGRICH, and Mr. KING.

H.J. Res. 58: Mr. COBLE.

H. Res. 16: Mr. ROHRABACHER.

H. Res. 32: Ms. NORTON, Mr. PETERSON of Florida, Mr. HALL of Ohio, Mr. CARDIN, and Mr. LEWIS of Georgia.

H. Res. 40: Mr. TORRES, Mr. PASTOR, and Mr. SERRANO.

H. Res. 41: Mrs. MEYERS of Kansas.

EXTENSIONS OF REMARKS

TRIBUTE TO DELAINE NELSON

HON. GERALD D. KLECZKA
OF WISCONSIN
IN THE HOUSE OF REPRESENTATIVES

Monday, February 22, 1993

Mr. KLECZKA. Mr. Speaker, I am pleased to recognize the accomplishments of Delaine Nelson, a constituent of mine and Wisconsin's own renaissance woman. For the past year, Delaine has served as president of the National Utility Contractors Association [NUCA], an organization representing the construction contractors and suppliers who provide the manpower and materials necessary for the construction of water, sewer, and other underground utility systems. In this capacity, she has shown the leadership and dedication that Wisconsin has been the beneficiary of for over 17 years. It is time that her accomplishments be known above ground.

Much of the work of Ms. Nelson, and the many men and women she represents, remains hidden from public view. Yet, well-built, well-maintained sewer systems and wastewater treatment facilities are necessary to ensure the public health and safety. Delaine Nelson has dedicated her career to this task.

As chairman of the Board of MRM, Inc., a New Berlin; WI, company, Ms. Nelson is known for her efforts on behalf of worker safety. In 1988, she was the first woman appointed to the Occupational Health and Safety Administration's advisory committee on safety and health. Indeed, in an industry that has traditionally been dominated by men, Ms. Nelson has paved the way for other women to succeed and excel.

Beyond all this, she has found time to be active in a local program to feed and clothe the homeless, teach Sunday school and vacation Bible school, and participate in a long list of hobbies. Delaine is a mother of four and a grandmother of nine.

If the past is any indication, Delaine Nelson's service to the industry, and to her community, will not end with the completion of her presidential term at NUCA. Certainly, Wisconsin will be the better for it.

The following article which appeared in the National Utility Contractor in May of 1992 illustrates why Delaine Nelson is one of Wisconsin's most accomplished leaders.

1991 NUCA PRESIDENT DELAINE NELSON: A DRIVEN AND ACCOMPLISHED LEADER

(By Anne Beall)

"The construction industry is ever growing and ever changing. That's why I'm here," 1992 NUCA president Delaine Nelson said when asked why she chose to pursue a career in construction. "It constantly presents challenges, and I love a challenge."

When talking to Delaine, it quickly becomes clear that she thrives on accomplishment. As she sits behind her desk, in an office filled with unique Southwestern prints and collectibles, she radiates confidence. Pictures of Delaine with members of OSHA's Advisory Committee and previous Secretaries of Labor Anne McLaughlin and Elizabeth Dole reinforce her reputation as totally committed to safety. A closer look around the office illustrates how her confidence and commitment have paid off—dozens of awards blanket the walls.

After 17 years of days filled with all the good jobs that moms do—girl scout leader, room mother, fill-in coach for dad's little league team—Delaine decided to begin working part-time. "My youngest son was thirteen years old, and I was ready to find more to do," she said. "I started out working just three days a week, but before I knew it, I had given up bowling and was working full-time. I was hooked."

Delaine was no stranger to construction. Her husband, Chuck, a chiropractor by profession, had been part owner and an executive of Mueller Pipeliners since 1954. "I really liked working again," Delaine recalls. "I liked the industry, and I liked the excitement. I knew that I would face skepticism as a woman and that it would be a challenge to pursue a career in construction. That's partly what made it so enticing for me," she said.

Seventeen years later, it's apparent that her hard work and dedication have paid off. Today, she sits as an owner and administrative vice president of MRM, Inc., where she directs safety and training.

A CINDERELLA STORY?

How did this mother of four break down the barriers facing a woman in a traditionally male industry? Persistence. "I encountered the most skepticism from the guys in the field," Delaine remembers. "They weren't very comfortable with me dictating safety to them. But I didn't let myself get turned off by it. Initially, I accepted it as part of the industry."

Determined to overcome the obstacles and learn the ins and outs of the industry, Delaine read everything she could get her hands on, talked to everyone in the field, listened carefully to everything she heard, watched closely what was happening at the jobsites, and asked question after question after question. And she learned. "I knew I had to be able to talk their jargon and understand the details on the jobsites. The guys in the field had a lot of good ideas," she said. "I began taking their ideas back to the office and giving them recognition if we implemented their ideas. I think they appreciated that. It helped them recognize that I was on their side." It didn't take long for Delaine to gain the respect of the company's management and employees.

A PARADOXICAL RELATIONSHIP

"Probably the most discouraging, yet rewarding, experience that I have had with the industry was my involvement with the OSHA Advisory Committee," Delaine said. In 1988, then Secretary of Labor Ann McLaughlin appointed Delaine to OSHA's Advisory Committee on Safety and Health. Delaine was the first representative of the underground utility construction industry to serve on the committee.

The committee is comprised of 15 members (five representing employers, five representing labor, and five representing the public sector) and is responsible for advising the Secretary of Labor on issues pertaining to safety and health in the construction industry. "The first year that I sat on the committee had its frustrations. I was the first woman ever appointed to the committee, and it took some time for the members to accept my ideas," she said. "It's like anything else—as a woman, I had to prove myself."

As the committee moved into its second year, committee members really began working well together, Delaine said. When OSHA proposed revisions to Subpart P, the group came together to develop commonsense ideas on how OSHA should proceed. "Fortunately, labor supported our issues, so we were able to work without antagonizing each other," she remembers. "I advised the committee that 60 days was not nearly enough time for contractors to develop training materials and conduct training seminars, and the committee agreed." OSHA delayed enforcement of the standard for an additional 60 days, based on the unanimous recommendation of the advisory committee.

"It was extremely fulfilling to see that I was able to be part of a policy decision that directly affected our industry. My only regret is that all of this happened at the end of my two-year term and that I was unable to continue," she said. "I felt like the group was gaining momentum and was sorry that the group would have to start over again." Participation on the advisory committee was a wonderful learning and growing experience for Delaine. "To sit at the table with the leaders of all sectors of the industry and to be involved in substantive debate was extremely rewarding. I'd do it all over again at a moment's notice," she said.

AN AWARD WINNING COMMITMENT TO IMPROVED JOBSITE SAFETY

Safety and Delaine Nelson go hand-in-hand. Her reputation for innovative safety ideas and her company's impeccable safety record are well known across the industry.

When Delaine became active in the industry 17 years ago, industry safety programs were in their infancy. "Back in 1975, OSHA had only been in existence for five years, and there wasn't broad-based recognition of worker safety. Employees were given protective gear and an occasional tool-box talk, and that was the extent of it," Delaine explained.

Over the years, as safety awareness has increased, Delaine Nelson and MRM have been in the forefront—and in many ways, they have set the standard. "We knew that jobsite safety was going to become a major issue for us, so we started developing programs early," Delaine said. Delaine developed the company's first safety guide and began conducting regular self-inspections in the field. While in the field, she talked to the inspectors and the employees in an effort to better understand the company's safety needs. She then took it one step further and visited several equipment manufacturers to see how the equipment was manufactured and tested.

What began several years ago as a standard company safety program has evolved into one of the most comprehensive safety programs in the country. Since 1981, the com-

pany has been the recipient of at least one safety award each year, including the highest safety award from NUCA and the Wisconsin Underground Contractors' Association. And Delaine can take most of the credit for that—although she is hesitant to.

"All I've done is put the systems into place. Our employees have made our safety program what it is today," she said. And the program is impressive. Under Delaine's watchful eye, the company holds a week-long safety school each year for the company's foremen and superintendents. The company brings in the state's best safety experts to discuss myriad safety issues, including defensive driving, natural gas safety, jobsite protection, trenching, and traffic control. The company also holds an eight-hour winter safety seminar for all of its employees and has implemented an extensive safety recognition and awards program. Safety newsletters, a trench safety program, company tool-box talks, and safety workshops are other major elements of their safety program.

The company's safety program was greatly expanded in 1989, when Delaine brought Jim Kurth, a 20-year foreman, into the main office to assist her with the safety field work. "As our safety manager, Jim has been instrumental in the recent growth of our safety program," Delaine said.

During the company's upcoming annual banquet, MRM will honor several employees that have been with the organization for 30 years. In addition, the company will present awards of thanks to 20-year and 10-year employees. That fact, alone, speaks volumes about the company—employees love to work for MRM.

Harold Mueller, chairman of the board of MRM, believes that the safety program that Delaine has developed for the company has been a major factor in the company's exceptionally low employee-turnover rate. "By having a strong safety program, employees know and understand that their employers are concerned about them," he said. "It makes them happy, and it makes them more productive, which, in turn, makes the company as a whole run and perform better."

GIVING BACK TO THE INDUSTRY

Delaine's safety skills do not stop with her company. As an active member of the Wisconsin Underground Contractors' Association (WUCA), Delaine has been instrumental in the association's establishment of a safety task force. The task force, comprised of safety directors from member companies, meets regularly to review safety standards, plan safety seminars, and compose and distribute safety-related letters to state legislators and agency officials. Currently, the task force is developing a statewide safety guide for underground utility contractors. "Delaine's leadership and advice throughout the years have helped to make our association one of the most informative on safety issues in the area," said Dick Wanta, WUCA executive director. "Her company's safety efforts have done a lot to raise safety awareness among our members and across the state."

Delaine's safety consciousness was also a primary reason that she became involved in NUCA. In January 1982, she attended NUCA's educational seminar in Puerto Rico. A few months later, she attended NUCA's national convention in Phoenix, Ariz. "Our company had belonged to several organizations, but once we became involved with NUCA, nothing compared," Delaine said. "We quickly learned that NUCA is a unique organization. You're an individual at NUCA, and members care about you as a person."

It wasn't long after the company joined the NUCA that Delaine became an active part of the committees. "Loretta Simmons and Vic DiGeronimo were strong influences in my becoming involved with NUCA so quickly," Delaine said. "Loretta wanted me on NUCA's safety committee, and Vic asked me to head a special task force. They were both so supportive, and I found that I really loved working with NUCA members."

Soon after her introduction to NUCA committees, Delaine moved into leadership roles—finance committee chairman, region V vice president, treasurer, president elect, and finally president.

A FULL PLATE FOR 1992

Looking ahead to what she will bring to her presidency, Delaine is focused and clear. "We will pick up where 1991 president Ron Pacella left off," Delaine said of her legislative goals for 1992. "Ron laid a strong foundation for securing adequate construction funding under the Clear Water Act. We will accomplish this goal during 1992. We really have no other choice."

Also at the top of Delaine's legislative laundry list is the defeat of H.R. 3160, the so-called OSHA reform legislation now pending in Congress. "Our industry has documented dedication to workplace safety, but we cannot support a bill that holds our management personally liable for workplace safety but does not take employee responsibility into account. Nor can we support a bill that sets one model and does not provide for employer flexibility in developing a safety program," she said. Although Delaine concedes that it is unlikely that we will be able to defeat the entire bill, she does believe we can influence the final version to make it more workable for contractors.

The investment tax credit will be a major focus of Delaine's presidency as well. By working closely with major manufacturers and talking with key lawmakers, Delaine believes that NUCA can make a difference and convince Congress that reinstatement of tax incentives would and should relieve the struggling economy.

Outside the legislative arena, Delaine will continue to give a high priority to NUCA's safety programs. During 1992, NUCA will hold another series of competent-person instructor training courses, as well as begin a new safety training series on confined-space entry. In addition, NUCA's safety committee is currently conducting a comprehensive revision of the NUCA Safety Manual, which will be completed by mid-1992.

Delaine also hopes to make major strides in membership development and retention. "I would like to see our membership grow and become more solid," Delaine said. "Our chapters could be the core of this effort. With NUCA's assistance, our chapters will grow and become stronger, and in turn, with the assistance and commitment of our chapters, NUCA will grow stronger. If we help each other, we will become more solid."

A BRIGHT FUTURE

When asked what's in store for the future of underground utility construction, Delaine is extremely positive. "Members often hear me say that overburdensome regulations are killing American business. But not all the regulation and legislation has been bad. A lot of laws and regulations have been forced upon the industry, but there is a flip side to this. Some good has come out of it. Tighter restrictions have significantly increased contractor awareness and have prompted many contractors to become more involved in the process, which has resulted in a stronger collective voice. I believe that the industry will be on solid ground for the next few years. There's a lot of work out there, we just have to shake the money loose," she said.

"That's why we belong to NUCA and why I chose to become so active. NUCA actively seeks to effect change and help the industry to grow, and I would like to be part of that process," she said.

MORE THAN MEETS THE EYE

Behind her trademark pink hard hat, clipboard, and safety seminars lurks another very different, yet similar individual. Delaine's dedication and commitment to helping others carries over to her life outside of the construction industry. As an active member of her church, where she taught Sunday school and vacation Bible school, Delaine is active in a program to feed and clothe the homeless. "I really enjoy my work with the homeless. I love to give to others, and they are so appreciative."

Delaine's life is filled with her family. She beams with pride as she talks about life as a mom of four and a grandma of nine. Her daughter Kathy owns a travel agency and has three children. Sharon, another daughter, has three children and designs and publishes the company's tool-box talks and newsletters from her home. Her sons, Charles, who has two children, and Richard, who has one child, own a metal polishing and deburring business. "My husband, Chuck, as well as my children have been very supportive of my decision to take on the NUCA presidency. They have just been great," she said.

With a life filled with so much activity and family, it's hard to imagine how Delaine finds time for the many other activities that she regularly undertakes—travelling, golfing, scuba diving, downhill skiing, and growing roses.

IT SAYS "VROOMM"

As I took one last glance back at the offices of MRM before I returned from the interview with Delaine, my eye caught the license plate of the sparkling blue Mercedes that she drives around Milwaukee. It reads "VROOMM." The plate is indicative of the type of woman who recently took over the NUCA presidency—an energetic, intelligent, and driven leader. How else would you describe a women who beat the odds to climb to the top of her profession. NUCA will be in good hands in 1992.

HOUSE CONCURRENT RESOLUTION 46, THE JOINT COMMISSION FOR THE UNITED STATES-MEXICO BORDER REGION

HON. BILL RICHARDSON

OF NEW MEXICO

IN THE HOUSE OF REPRESENTATIVES

Monday, February 22, 1993

Mr. RICHARDSON. Mr. Speaker, on Thursday February 18, 1993, I introduced legislation to create a joint commission for the United States-Mexico border region. The creation of such a commission is long overdue. It is needed to address the escalation of environmental and public health problems in the region, and I believe both the United States and Mexico should agree to the terms of such a joint commission before the implementation of the North American Free-Trade Agreement [NAFTA].

House Concurrent Resolution 46 does not offer a specific solution to every single envi-

ronmental concern raised by the NAFTA, but it does contain a broad array of elements that address significant environmental problems and offers an outline as to how the United States and Mexico can work bilaterally to solve them.

The people who live along the United States-Mexico border are on the frontline of the two countries' environmental and public health problems. Air pollution, contamination of ground water and surface water supplies, and explosive levels of population and poverty over the past decade have degraded the border environment and left the region's environmental infrastructure substandard, at best, and, in far too many cases, simply nonexistent. The U. S. Environmental Protection Agency [EPA] has put a $5 to $7 billion price tag on the region's problems.

United States-Mexico border residents recognize that not all the region's problems will go away overnight, but they do need and should expect from their central governments better coordination of existing resources and new financial strategies to allow border area cities and towns to help themselves. My proposed joint commission for the United States-Mexico border region is aimed at accomplishing those goals. House Concurrent Resolution 46 would: First, improve coordination of environmental protection activities between the United States and Mexico along the border and on a nationwide basis; second, provide small border communities access to international capital markets for financing environmental infrastructure projects; third, provide United States technical expertise to Mexico in such areas as regulatory development, environmental impact assessment, hazardous waste management, pollution prevention, and conservation; fourth, require all companies with operations in the United States-Mexico border to comply with reporting procedures similar to those under the Emergency Planning and Community Right-to-Know Act; fifth, promote voluntary service and increased corporate philanthropy in the border area; and sixth, facilitate greater public participation through the establishment of regional border offices and a bilateral consultative process, which may include the holding of public hearings and the appointment of investigatory environmental boards.

This commission does not seek to duplicate the functions of the International Boundary and Water Commission [IBWC] or those to be carried out under the United States-Mexico Integrated Border Plan. Both the IBWC and EPA's Integrated Border Plan play an instrumental role in providing the border region with resources and funding for a small number of very large projects. For example, EPA has already committed a total of $146 million in fiscal year 1993 for environmental projects on the United States side of the border. Similarly, Mexico has committed $460 million over 3 years to carry out commitments under the border plan. While the border plan represents a historic undertaking for both countries, I would emphasize that this bilateral initiative deals primarily with a small number of large environmental infrastructure projects such as the $350 million Tijuana River wastewater treatment facility and similar facilities in Nogales and Laredo/Nuevo Laredo border communities.

That leaves dozens of small border communities without sufficient resources to finance their long-term environmental infrastructure needs, and so far the United States and Mexico have not figured out a financing strategy to assist these communities. To address this problem, the joint commission will establish and oversee a Border Environmental Guaranty Fund [BEGF], the purpose of which is to provide financial guaranties for the repayment of debt instruments that are issued by private and public financial organizations. The proceeds from such debt instruments will be used by border area communities to create, replace, or improve environmental infrastructure facilities. And it will be the residents of these border area communities who make payments on these debt instruments through a system of user fee charges established by the local environmental facility.

I want to emphasize to my colleagues that the BEGF does not finance environmental projects. Rather the BEGF will be capitalized by the United States and Mexico at no less than $200 million, an amount that will allow for well over $2 billion in private funds to be raised in capital markets by local border area governments that use the guaranty of the fund. The $2 billion in private funds is the revenue used for construction of environmental facilities, and the $200 million stays in the fund as collateral against all bonds issued by local border area governments.

The function of the BEGF therefore is twofold. First, it will upgrade the investment grade rating given to such bonds as water and wastewater system bonds from noninvestment grade [NIG]—essentially junk bonds—to investment grade rating and thereby lower the cost of constructing environmental facilities considerably. Second, the BEGF will act as a guarantor for bondholders of environmental facilities in those instances when a facility is delinquent on its bond payments. Let me use an example to illustrate this point. If a local government in the border area issues a bond to construct a wastewater treatment facility and a revenue shortfall experienced by the facility prevents it from making its full payment to bondholders, then the BEGF steps in to make the facility's payments in full and on a timely basis. Once the wastewater treatment facility resumes payments, it will make up the missed payments to the fund.

The U.S. experience with water and wastewater bonds demonstrates that delinquency on payments—not outright default—is the most significant problem for small water and wastewater systems. It should be expected, therefore, that the BEGF will use its funds to pay for delinquent payments, but the BEGF will also have those expended funds replenished. In other words, the BEGF will use its funds, but it will also get them back. Since outright default on small water and wastewater bonds is exceedingly low, this is how the BEGF is expected to operate.

While the BEGF will be established in a way that allows for the joint participation of Mexico, it can operate solely as a domestic fund to assist United States border communities in securing financing for environmental infrastructure projects in their region. It will be Mexico's decision to put capital into the fund, but in doing so, Mexico will obviously have to establish a public securities market for environmental projects and create a system where water and sewer bonds are paid off with user fees charged to the environmental facility's users.

The establishment of the BEGF will be consistent with the way capital improvement projects are financed in the United States. U.S. local governments—not the Federal Government—usually pays for the cost for the construction of environmental infrastructure projects such as wastewater treatment facilities, drinking water hookups, and solid and hazardous waste landfills. The creation of the Border Environmental Guaranty Fund recognizes the primary role of local governments and is established with the purpose of allowing these border communities to continue paying the cost of constructing these facilities.

What the guaranty fund will allow is local border communities to raise money for environmental infrastructure at a cost that is comparable to that of similar facilities in large cities. The total annualized local government cost to implement major environmental regulations continues to rise well beyond the rate of inflation. These increased costs have hit small border communities especially hard. Per capita, smaller border communities are paying more for environmental protection than those Americans living in larger urban centers. For many border communities, the costs have become prohibitive, leaving many border residents without drinking water and adequate wastewater facilities.

It is clear that Washington and Mexico City will never have the adequate financial resources to assist all of these communities. That is why it is imperative for the United States and Mexico to establish a credit enhancement mechanism, such as the BEGF, to supplement existing bilateral commitments under the border plan, so as to allow communities greater self-reliance in financing locally needed environmental infrastructure projects over the long term.

The technical cooperation program outlined in this legislation will expand efforts already underway between the United States and Mexico to improve Mexico's environmental quality of life by helping Mexico to capacity build at the Government level. The reason is simple. At the present time, there are only a limited number of trained Government personnel in areas such as environmental protection, conservation, and pesticide regulation for the agricultural industry. To broaden Mexico's capacity in these and other areas, the technical cooperation program will provide assistance, offering the country temporary personnel exchanges from a variety of United States agencies in the areas of the environment and public health.

House Concurrent Resolution 46 also requires companies with operations in the United States-Mexico border region to comply with reporting requirements similar to those under the Emergency Planning and Community Right-To-Know Act. This provision seeks to have both the United States and Mexico reach agreement on a formalized process to abide by community right-to-know principles and to facilitate public access to this information. The establishment of regional border offices by the commission will provide the border area com-

munities with more outreach and oversight of environmental issues impacting their communities.

This legislation seeks to promote voluntary service and increased corporate philanthropy in the border region. Presently, the U.S. Small Business Association administers the Senior Corps of Retired Executives [SCORE], a Government-sponsored program that recruits retired professionals in a variety of business disciplines to provide their expertise, to small businesses across the country. Through a broad-based SCORE program, professionals in public health, civil engineering, environmental sciences, urban planning, and architecture would be sought to provide voluntary service to local governments, nonprofit organizations, and small businesses on both sides of the United States-Mexico border. As for the companies with operations in the border region, their record of corporate giving to their communities is horrible. One of the activities of the commission should be to promote more involvement and philanthropy among corporations operating in the border area.

Mr. Speaker, the United States and Mexico not only need each other to prosper economically but also to strengthen environmental protection along its shared border and in both countries. In the coming months the United States and Mexico will be negotiating side agreements to the NAFTA to address many of the concerns about the environment. It is my hope that House Concurrent Resolution 46 gives negotiators from both countries an accurate outline of the elements that must be a part of any environmental side agreement. Mr. Speaker, I ask that the text of House Concurrent Resolution 46 be printed in the RECORD after this statement.

H. CON. RES. 46

Whereas the North American Free Trade Agreement (NAFTA) will increase the flow of commerce and trade between the United States and Mexico;

Whereas the lack of environmental facilities, enforcement, and economic growth in the United States-Mexico border region has caused widespread public health problems and environmental problems, including serious degradation of air quality, quality and availability of transboundary ground water and surface water supplies, and soil quality;

Whereas increased levels of commerce, trade, and economic development under NAFTA will exacerbate the existing public health problems and environment problems in such border region;

Whereas, although economic growth under NAFTA will also create more resources to protect the environment in such border region, such resources will not make an immediate or significant reduction in the border region's public health problems and environmental problems;

Whereas such health and environmental problems will necessitate expanding the level of bilateral environmental cooperation between the United States and Mexico;

Whereas one method of bilateral environmental cooperation would be to establish a joint commission aimed at complimenting the activities of the International Boundary and Water Commission, alleviating public health problems and environmental problems in the United States-Mexico border region, and expanding bilateral environmental cooperation on a nationwide basis;

Whereas there has been great concern expressed both in the United States and in Mexico that insufficient financial resources exist at the Federal levels in both nations to deal with the public health problems and environmental problems in such border region;

Whereas the best alternative to Federal funding for projects to alleviate public health problems and environmental problems in such border region is to establish access to the international capital markets for public and private financial organizations with the power to incur and issue debt;

Whereas the establishment of access to the international capital markets for public and private financial organizations would initially require a form of credit enhancement for any debt instruments issued by such organizations;

Whereas the debt instruments issued by such organizations would be used to fund projects to create, replace, or improve the environmental infrastructure facilities in the United States-Mexico border region;

Whereas the users of environmental infrastructure facilities in both the United States and Mexico would be the revenue base for the repayment on such instruments issued by such organizations;

Whereas currently no means of credit enhancement exist to guarantee the debt of such organizations;

Whereas there is mutual agreement between the United States and Mexico to increase technical assistance provided between the two nations relating to environmental issues;

Whereas there is a need to promote greater public participation and public disclosure relating to public health issues and environmental issues in the United States-Mexico border region, including requiring businesses located in the Mexican part of such border region to comply with reporting requirements similar to the hazardous substances reporting requirements under United States Federal law; and

Whereas there is a need to promote greater voluntary service and corporate philantrophy in such border region: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring),

SECTION 1. SHORT TITLE.

This concurrent resolution may be cited as the "Joint Commission for the United States-Mexico Border Region Resolution".

SEC. 2. ESTABLISHMENT OF BILATERAL COMMISSION.

(a) IN GENERAL.—The Congress urges the President to reach an agreement with Mexico on the establishment of a joint commission (in this concurrent resolution referred to as the "Commission") between the United States and Mexico to help alleviate public health problems and environmental problems in the United States-Mexico border region caused by the lack of environmental infrastructure capacity in such border region, the growing shortages of ground and surface water resources shared by both nations, and by the increased levels of commerce, trade, and economic development under the North American Free Trade Agreement (in this concurrent resolution referred to as "NAFTA").

(b) TIME LIMIT.—The agreement described in subsection (a) should be reached not later than the effective date of the legislation implementing NAFTA.

SEC. 3. COMPOSITION.

The Commission should be composed of 12 members, 6 of whom should represent the United States and 6 of whom should represent Mexico. Of the 6 members representing the United States, the President should appoint—

(1) the Administrator of the Environmental Protection Agency as the head of the United States delegation;

(2) the Commissioner of the United States section of the International Boundary and Water Commission; and

(3) one representative from—

(A) the Department of Health and Human Services;

(B) the Department of the Interior;

(C) the Department of Housing and Urban Development; and

(D) the Department of Agriculture.

SEC. 4. DUTIES.

(a) BORDER ENVIRONMENTAL GUARANTY FUND.—The Commission should establish and oversee a Border Environmental Guaranty Fund (in this concurrent resolution referred to as the "Fund") to provide financial guarantees for the repayment of debt instruments issued by public and private financial organizations, the proceeds of which are used to fund projects to create, replace, or improve the environmental infrastructure in the United States-Mexico border region. The Fund should meet the following requirements:

(1) The United States and Mexico should each contribute not less than $100,000,000 to the Fund.

(2) The obligations of the Fund should not have any guaranty, express or implied, of the United States Government.

(3) The guaranty of the Fund should confer on underlying debt instruments issued by public and private financial organizations the lowest investment grade ratings from independent and internationally recognized securities rating organizations for the purpose of leveraging the Fund to the maximum extent possible so that the greatest possible ratio exists between the amount of debt guaranteed by the Fund and the amount of capital in the Fund.

(4) The Fund should have a board of directors to provide financial management of the Fund and management of projects guaranteed by the Fund. The board should be composed of 10 members, 5 of whom should represent the United States and 5 of whom should represent Mexico.

(5) Members of the board should be reimbursed for reasonable expenses incurred in carrying out their duties, and such expenses should be paid for equally by both the United States and Mexico.

(6) The board should be provided with an independent staff in order to carry out its duties in a prudent and timely manner.

(b) TECHNICAL COOPERATION PROGRAM.—The Commission should establish a program to provide for technical assistance and the exchange of personnel for environmental coordination activities between the United States and Mexico including the provision of technical assistance to Mexico from representatives of the Environmental Protection Agency and other relevant Federal agencies), including training in activities such as environmental impact assessment, the development of environmental standards, enforcement of such standards, pollution prevention and control, the control of the use of pesticides, waste management, response to chemical emergencies, toxic emissions reporting, marine pollution, conservation activities, and urban planning and infrastructure development.

(c) PROCEDURES TO PROMOTE INCREASED PUBLIC PARTICIPATION AND PUBLIC DISCLOSURE RELATING TO PUBLIC HEALTH AND ENVIRONMENTAL ISSUES.—The Commission should establish procedures to promote increased public participation and public disclosure re-

lating to public health issues and environmental issues in the United States-Mexico border region. In establishing such procedures, the Commission should meet the following requirements:

(1) The Commission should establish no fewer than 2 regional border offices to foster community outreach, public participation, and border volunteer initiatives in the United States-Mexico border region.

(2) The Commission should be given the authority to require businesses located in the Mexican part of the United States-Mexico border region to comply with reporting requirements similar to those described in the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 note).

(3) The Commission should consult with the Border Environmental Public Advisory Committee of the Environmental Protection Agency so that expertise from the private and public sectors is readily available to the Commission in the areas of public health, agriculture, housing and urban development, conservation, and public voluntary service.

(d) UNITED STATES-MEXICO BORDER REGION VOLUNTEER SERVICE.—The Commission should, in conjunction with the Commission on National and Community Service, establish a United States-Mexico Border Volunteer Service, which—

(1) in cooperation with the Small Business Administration, should work to expand the activities of the Senior Corps of Retired Executives (SCORE) in the fields of public health, civil engineering, environmental sciences, urban planning, and architecture;

(2) should provide assistance and advice to border area not-for-profit organizations on projects aimed at addressing the array of environmental health, housing, and social service needs of the United States-Mexico border region; and

(3) should promote initiatives aimed at increasing the level of corporate philanthropy among businesses in the United States-Mexico border region for the purpose of alleviating public health problems and environmental problems in such border region.

SEC. 5. POWERS.

(a) HEARINGS AND SESSIONS.—The Commission should, for the purpose of carrying out its duties under section 4, hold hearings, sit and act at times and places, take testimony, and receive evidence as the Commission considers appropriate, including holding hearings on all matters and issues under the jurisdiction of the International Boundary and Water Commission. All such hearings should be open to the public.

(b) APPOINTMENT OF INVESTIGATORY BOARDS.—The Commission should appoint 1 or more boards composed of qualified individuals to conduct on the behalf of the Commission investigations and studies which the Commission determines necessary to provide oversight of the Fund described in section 4(a) and the technical cooperation program described in section 4(b).

SEC. 6. REPORTS.

The Commission should submit an annual report to both the United States Government and the Government of Mexico regarding all activities of the Commission during the current year.

SEC. 7. UNITED STATES-MEXICO BORDER REGION DEFINED.

For purposes of this concurrent resolution, the term "United States-Mexico border region" means the area located in the United States and Mexico within approximately 65 miles of the border between the United States and Mexico.

AMERICAN AND UNITED NATIONS TROOPS SHOULD BE PLACED IN MACEDONIA

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 22, 1993

Mr. LANTOS. Mr. Speaker, the United States faces serious limitations on what we are able to do to bring an end to the bloodshed and violence in Bosnia. On the one hand, we want to see stronger action, tougher action, to punish the Serbian aggressors who have engaged in ethnic cleansing, systematic rape of girls and women, and blockades to starve out Bosnian Moslems. At the same time, however, we have been unwilling to send American ground forces into Bosnia to lift the siege of Sarajevo or break the blockade against other encircled Bosnian enclaves.

Last Thursday, Dr. Zbigniew Brzezinski appeared before a joint hearing of the Foreign Affairs Subcommittee on Europe and the Middle East and the Subcommittee on International Security, International Organizations and Human Rights. Dr. Brzezinski gave an excellent presentation regarding the limitations and opportunities for collective security in this post-cold war-era. In his excellent discussion of the lessons of Bosnia, Dr. Brzezinski noted that one concrete step the United States can and should take is the stationing of United Nations peacekeeping troops—including United States troops—in the former Yugoslav republic of Macedonia and possibly in Kosovo.

Mr. Speaker, today's New York Times published an op-ed by Walter Russell Mead, a senior counselor at the World Policy Institute, in which he considered the issue of placing American troops in the former Yugoslav republic of Macedonia. I ask that Mr. Mead's article be placed in the CONGRESSIONAL RECORD. He presents clearly and convincingly the arguments in favor of placing American troops as part of a United Nations contingent in Macedonia, and it is an issue to which our colleagues in the Congress should give serious and thoughtful consideration. It represents an important and effective step that the United States can take, but at the same time it is one that involves limited risks.

PUT AMERICAN TROOPS IN MACEDONIA

(By Walter Russell Mead)

NEW ORLEANS.—So far, Washington's Balkan policy has been built on principles of bluster and bluff. Speak loudly, but leave the stick at home.

The Serbian leaders, says the U.S., are war criminals who should all be brought to trial. The Vance-Owen peace plan, which brings those same Serbs to the negotiating table, was derided by Americans eager to take a stronger stand. The Europeans who backed it were pusillanimous, we said. The Vance-Owen plan rewarded aggression, we said.

It was all very exhilarating and all very true. But it was all empty bombast as well. When push came to shove, the U.S. had no alternative to Vance-Owen and fell humbly, humiliatingly in line with the spineless Europeans and their appeasement of war criminals.

The double-minded man is unstable in all his ways, warns the Bible. It would be hard to find a better description of American policy in the former Yugoslavia. The U.S. has two paramount goals: it wants to stop ethnic cleansing, and it wants to stay out of the war. These goals are moral, they are prudent and, if achieved, they advance the national interest. They are also incompatible, and the contradiction between these irreconcilable and but non-negotiable objectives has plunged the Balkan policy of the last two Administrations into sordid and wretched chaos.

If this were the end of the story, we could live with it. There have been bad peace treaties before, and harsh bargains with evil leaders—worse proposals than Vance-Owen. And there have been bigger diplomatic blunders than the fiasco launched under the Bush Administration by Lawrence Eagleburger and continued by Secretary of State Warren Christopher.

Unfortunately, the Balkan tragedy has two or three more acts to come, and American braggadocio—the mixture of bluster and cowardice that still guides our policy—is the policy most likely to widen the war.

Even as Washington caved in by accepting the basic outline of the peace plan, the U.S. was preparing for new crises down the road. Some peace plan! Mr. Christopher's statement on the Vance-Owen proposal included not only a surrender on Bosnia by ratifying Serbian territorial conquests but new threats to Serbia, lest it move into the neighboring republic of Macedonia and into the Serbian province of Kosovo, where restive ethnic Albanians are likely targets for a new round of brutal ethnic cleansing.

The combination of brave words and craven deeds is unlikely to impress the Serbian warlords in whose bloody hands the chances for peace now rest. The West talked big but did little over Croatia. It huffed and puffed over Bosnia but did nothing. Now it is on its high horse over Kosovo. The U.S. looks imposing but like a scarecrow it never moves, and the Serbs have figured that out.

It all seems sadly ridiculous, but it's worse than that. The U.S. has interests in the Balkans important enough to fight for and that will, if challenged, drag a reluctant nation into a new and nasty not-so-little war. Ethnic cleansing in Kosovo is likely to provoke war with Albania and destabilization in Macedonia, where there are also large and restless Serb and Albanian communities. Neither Bulgaria nor Greece could easily stay neutral if the war spreads to Macedonia, and, in a worst-case scenario, Turkey could find itself drawn in as well.

The U.S. could not finesse this situation. A war that puts Greece and Turkey on opposite sides would break up NATO and seriously strain the U.S.-European relationship and the already-frayed European Community. The U.S. and Germany would almost certainly tilt toward Turkey; Britain and France would probably support the Greeks—and so might the Russians.

The prevention of this wider Balkan war is the vital interest that should shape American policy. The U.S. needs to stop the Serbs where they are, but it does not need to roll them back. To do that, we must convince them that further attacks would mean war. This won't be easy after so many false warnings.

Sending peacekeeping troops to Bosnia is the most likely form of U.S. military intervention at this stage. Unfortunately, it is the least satisfactory approach. American peacekeeping troops there would become hostages to events in Kosovo and Macedonia. Just as Britain and France opposed the enforcement of the "no fly" zone over Bosnia

because of the risk to their peacekeeping troops, the U.S. would have to take the safety of its Bosnian peacekeepers into account when responding to Serbian aggression in neighboring republics.

The best solution—radical-sounding but on balance the most prudent course—would put American troops where they might still preserve the peace: Macedonia. With or without formal recognition of the ex-Yugoslav republic, a temporary dispatch of at least 50,000 troops—preferably multinational but in any case including a large proportion of well-equipped Americans—would send a tough message to Serbia without provoking war.

Unlike peacekeepers in Bosnia, these troops would not come under hostile fire; they would defend the independence and territorial integrity of a country that the U.S. very much needs to preserve. The multilateral force would also be authorized to protect the Albanian majority in Kosovo from Serbian attack. Without firing a shot, these troops would significantly reduce the chance that the Yugoslav war would widen, and they would introduce a new note of realism into Serbia's distracted councils.

But even if fighting spreads to Macedonia, the multilateral presence will help avoid the worst: splitting our most important alliance and straining our relationships with every important country in Europe and the Middle East.

This military policy needs a diplomatic strategy to succeed. The U.S. should win British, French and Greek support for the peacekeeping mission. Washington should also develop with the Russians a peace program that the Serbs can accept. At the same time the signal to Serbia should be softer.

Instead of talking about Nazi-type war trials, which the U.N. Security Council is expected to vote for this week, the United Nations and Washington should be talking about regional reconstruction and the benefits of cooperation. It may go against the grain to let criminals go unpunished, but no major country has any intention of dismantling the Serbian Government by force and arresting its leaders. Nor, realistically, is the world ready for a prolonged boycott of Serbia that would destabilize the region even further and prevent any change for future prosperity.

Our Balkan policy is too important to be based on illusions. No lasting peace is possible without Serbian participation, and as long as the Serbs do not widen the war, the U.S. has nothing to gain and much to lose from a prolonged quarrel with Belgrade.

Clear thinking and decisive action—for a change—represent the only hope for a relatively safe path through the minefield. Otherwise, we are likely to be bloodied and humiliated by the most dangerous European crisis in 50 years.

GAYS, BUT NOT GAY BEHAVIOR

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Monday, February 22, 1993

Mr. FRANK of Massachusetts. Mr. Speaker, one of the things of which we have too little in our public debates is an effort to make policy according to consistent principles, even when those principles might lead one to a result which one's political allies oppose.

The lead editorial in the Boston Herald for Monday, February 1, is an example of the way in which people ought to reach conclusions on significant public policy questions. I disagree with some aspects of the editorial, in its comments on President Clinton and more emphatically in its comments about homosexuality. But its main point articulates in a clear, compelling, and persuasive fashion what the policy of the U.S. Government ought to be with regard to gay men and lesbians serving in the military.

The final three paragraphs of this editorial state the appropriate principle—that individuals in the armed services should be judged on their behavior, and not on any basic characteristic—and also demonstrate how this ought to be applied, by making the clear cut distinction between activity on base, on duty, or in uniform and conduct which takes place off base, off duty, and out of uniform.

Mr. Speaker, I am impressed with this conclusion precisely because it comes from someone with whom I do disagree about some aspects of the question of homosexuality in general, and I applaud the intellectual integrity of the Herald's editorial board. The two sentences which conclude this editorial—"gays and lesbians can, and do, make superb soldiers. But their private sex lives, like all of ours, should remain, private"—sum up precisely what gay men and lesbians should be asking for. I am very pleased that the Boston Herald has made this significant contribution to this debate.

GAYS, BUT NOT GAY BEHAVIOR

It was inevitable that President Clinton's promise to lift the ban on gays in the armed forces would generate a firestorm of controversy. That is not an argument for or against it. But people may reasonably wonder why this issue had to be raised during Clinton's first week in office.

It's the economy, stupid—remember? "I am going to focus like a laser beam on this economy," said Clinton one day after the election. In his inaugural address, he described the economy as "weakened by . . . deep divisions among our own people." Does he think forcing into place a drastic new policy on a subject so explosive is going to heal those divisions?

In his first few days of piloting the ship of state, our 43-percent president has come in for heavy weather. His nomination of Zoe Baird came apart in his hands. His rash of abortion announcements last Friday galvanized pro-life enmity. His first pronouncements on nuts-and-bolts economic policy replaced a campaign promise of tax relief with a new threat of tax severity.

The nation does not need a wrenching debate over gays in the military right now. This could have waited.

But Pandora's box having been thrown wide open, the issue needs to be settled.

Three principles are relevant here.

First, the function of the military is to defend the national security of the United States. Unit cohesiveness is critical to that function. Any policy on military personnel must be judged, at least in part, by its effect on such cohesiveness.

Second, disapproval of homosexuality is not simply blind bigotry. The gay lifestyle is repudiated by every major religion. It is manifestly not normative. Basic decency requires each of us to regard homosexuals with tolerance and with an awareness that few people choose their sexual orientation. But neither decency nor wisdom requires that governments confer legitimacy on same-sex relationships, or treat them as a sort of co-equal alternative to the bonds between men and women.

Third, there is a fundamental difference between *being* and *doing*. Your nature, your orientation, your thoughts, your urges—those must be irrelevant in the eyes of the law. Thus, you cannot be discharged from the Armed Forces for having a rebellious nature; it is only when you act rebelliously that you may be disciplined.

The best policy for the military is one that melds these principles. In effect, that is what U.S. District Judge Terry Hatter of the Central California district ordered last Thursday. Hatter struck down the ban on homosexuals and prohibited the military from discharging gays "in the absence of sexual conduct which interferes with the military mission."

The key decision Clinton announced Friday—ordering recruiters to stop asking applicants about their sexual preference—is the right one. It must remain quite clear, though, that any homosexual activity while on base, on duty, or in uniform continues to be forbidden. Gays and lesbians can, and do, make superb soldiers. But their private sex lives, like all of ours, should remain—private.

IN HONOR OF BILLY AND EMELYN KIRBY, CELEBRATING THEIR 50TH ANNIVERSARY ON JANUARY 30, 1993

HON. CHET EDWARDS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Monday, February 22, 1993

Mr. EDWARDS of Texas. Mr. Speaker, I rise today in honor of Billy and Emelyn Kirby who celebrated their 50th wedding anniversary on January 30, 1993.

It is indeed a special honor for me, Mr. Speaker, for I have known the Kirbys since my college days at Texas A&M. I owe a great debt of personal gratitude to Billy for teaching me the ways of Washington when I was a young college graduate working for the chairman of the House Veterans' Affairs Committee nearly two decades ago. Then, as now, Billy was acknowledged as one of America's leading authorities on veterans' programs and health care.

The first pages of this uniquely American love story between Billy and Miss Em were written just before World War II in the town of Clifton, a village known throughout Bosque County and central Texas for its strong work ethic and rigid moral standards befitting the town's Norwegian founders. The Norwegian influence in Clifton was so strong that even after Billy and Miss Em had been dating for quite some time, Miss Em's father, a devout Lutheran minister, still referred to Billy as that American boy.

That American boy began his military career in 1940 as a member of Company K, 143d Infantry Regiment, 36th Division, of the Texas National Guard. Just before he was shipped overseas, he and Miss Em married and honeymooned on Cape Cod. During the Rapido River Battle in Italy, Billy sustained gunshot wounds to his right shoulder and arm on January 21, 1944. Following his discharge

from military service 2 years later, the former staff sergeant and his young bride returned to Dallas to begin a new life.

Billy then joined the Disabled American Veterans [DAV] as a life member of Chapter 32 in Dallas and dedicated his life to his fellow veterans. Shortly thereafter, Billy entered American University in Washington, DC, to study in the DAV National Service Officer [NSO] training program. He worked as a DAV NSO in Dallas and Waco until 1962 when he joined the staff on the House Veterans' Affairs Committee. In Washington, Billy worked with such giants in the world of veteran's affairs as long-time committee chairman Olin E. Tiger Teague and former committee staff director Oliver E. Meadows.

Following his retirement from the Hill in 1977, Billy and Miss Em became extremely active in the DAV on the local and national level. His immense contributions to the DAV were fully recognized when, after having served 2 years as an elected vice commander, Billy was elected national commander of the million-member DAV in 1988–89.

Billy and Miss Em's civic involvement has also been extensive. In 1986, Billy was appointed to serve on the Texas Veterans' Commission and has held leadership positions in several veterans, civic and political organizations in Bosque County. He and Miss Em have also been extremely active members of Trinity Lutheran Church in Clifton and have devoted considerable time and effort to improve medical care in the Clifton area.

But I'm sure Billy and Miss Em would agree that their greatest accomplishment has been raising two wonderful children, Larry and Phyllis, and keeping an ever watchful eye on their four beautiful grandchildren.

From a personal standpoint, I proudly consider Billy Kirby a mentor and trusted advisor. As a couple, I consider Billy and Miss Em to be among my dearest friends. I can also say unequivocally that no one in the 11th District of Texas, which has one of our Nation's largest concentrations of veterans and veterans' facilities, has done more to assist veterans than Billy Kirby. In short, Mr. Speaker, Billy Kirby is truly a veteran's veteran and a man that I respect above all others. He is one of those rare persons whose life has been totally devoted to helping others without any interest in personal recognition.

Mr. Speaker, I ask my colleagues to join me now in congratulating Billy and Emelyn Kirby on their 50th wedding anniversary. Very few people are able to experience the kind of love and commitment that Billy and Miss Em have shared for these many years. Their dedication to each other, to their family, to their community, and to America's veterans is truly extraordinary. It is my sincere hope that they will share many more years of happiness together.

NATIONAL FFA WEEK

HON. WILLIAM H. NATCHER

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Monday, February 22, 1993

Mr. NATCHER. Mr. Speaker, I am pleased to join with the members of the National FFA Organization as they celebrate National FFA Week this week. Through the FFA, students enrolled in agricultural classes in public high schools and vocational centers not only provide community services and increase their knowledge of agriculture, but also gain valuable leadership skills. For this reason, FFA—The Spirit of Leadership is an appropriate theme for this year's National FFA Week.

In my home State of Kentucky, over 1,000 FFA members and teachers attended 1 week of leadership training at the Kentucky FFA Leadership Training Center in order to better guide their local FFA chapters. The dedication and ability of these people can be seen in the results of regional, State, and national competitions.

From the Second Congressional District of Kentucky, the district I represent, winners at the State FFA convention last June were: Frank Nolan, Jr., of Spencer County in agricultural electrification, Jeremy Hinton of LaRue County in forage crop production, William C. Dobson of Adair County in nursery operations, Eric Butler of Adair County in outdoor recreation, Scotty Clan of Hardin County in placement of agricultural production, Kevin Thomas of Hardin County in sheep production, Bobby Wooldridge of Spencer County in soil and water management, Joey Shine of Metcalfe County in specialty crop productions, the Spencer County FFA Chapter for the Building Our Communities Program, Ginilin Barlow of Barren County in the AIC contest—first place, David Tucker of Taylor County in the AIC contest—second place, Jason Ferguson of Hardin County in the AIC contest—third place, the Central Hardin Chapter in chapter meeting, Melodie Stull of Breckinridge County in impromptu speaking beef, the Breckinridge County Chapter in farm business management, the Warren East Chapter in the record keeping contest, the Central Hardin Chapter in FFA commodity marketing, and Jeff Wathen of Marion County in creed speaking.

I am also proud to have regional Star State FFA members in production and Star State Agribusinessmen from the district I represent. Gayle Aubrey of Breckinridge County, Angie Montgomery of Spencer County, and Kirby Hancock of Adair County were all recognized as regional Star State FFA members in production at the State FFA convention. Andrew D. Koostra of Warren County was recognized as the Star State Agribusinessman and Kevin Whitworth of Breckinridge County and Paul Smothers of Taylor County were both recognized as regional Start State Argribusinessman.

Several chapters from the Second Congressional District of Kentucky were recognized for chapter safety. The Spencer County Chapter won second place in the State and the Daviess County, Barren County, Edmonson County, Metcalfe County, Breckinridge County, Central Hardin, Bullitt Central, Spencer County, and Taylor County chapters were all recognized as regional superior chapters.

Students are not the only ones recognized for hard work and leadership through the National FFA Organization. This past year, two teachers from the State of Kentucky received the Honorary American FFA Degree at the national FFA Convention in Kansas City, MO. One of these individuals, Lloyd Horne, is an agriculture teacher at Central Hardin High School in Kentucky's Second Congressional District.

All down through the years, the National FFA Organization has helped young people achieve their goals in the field of agriculture and at this time, I would like to commend all of those associated with the FFA throughout Kentucky and across the Nation for their many accomplishments. I wish them continued success in the future.

THE 90TH ANNIVERSARY OF THE SALT RIVER PROJECT

HON. BOB STUMP

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 22, 1993

Mr. STUMP. Mr. Speaker, I rise today to salute the Salt River project, an institution that this month celebrates its 90th anniversary as the Nation's oldest multipurpose reclamation project.

The company, headquartered in Tempe, AZ, is the State's largest water supplier and the third largest public power utility in the Nation. It serves more than 550,000 customers in the greater metropolitan Phoenix area, operates six major dams and reservoirs, and has transmission links throughout the Southwest. It owns and participates in coal mines and generating stations in Arizona, California, Nevada, New Mexico, and Colorado. And, it counts among its customers some of the Nation's foremost computer and electronic manufacturers, aviation industries, mines, and agricultural enterprises. From an Arizona vantage, from Washington, DC, to the bond markets of New York, the name of Salt River project [SRP] has set a standard for high value, low-cost water and power, and for financial reliability and stability.

At the core of SRP's reputation is a corporate history that is tied deeply to the history and development of Arizona. Born out of a drought that parched the West in the late 19th century, SRP was formed in 1903—9 years before Arizona became a State. The company's original purpose was to provide early settlers with a reliable source of water for farming. To accomplish this, SRP's founders mortgaged their lands to the Federal Government as loan collateral for the construction of Theodore Roosevelt Dam—one of the first, great projects of the U.S. Bureau of Reclamation. When the dam was completed in 1911 in the Salt River Canyon east of Phoenix, it stood as one of the engineering triumphs of its time. Dependable water supplies were achieved. Agriculture flourished. As the Phoenix area prospered, construction of five other dams followed. Hydroelectric capabilities were developed and, in 1937, special action by the State legislature formally put SRP into the power business. The rapid growth of the Phoenix area after World War II and its transformation into the commercial hub of the Southwest came about in part through SRP's progressive efforts, economic development programs, and commitment to community partnerships.

Today, SRP and Arizona stand together at the threshold of a new era and at the cross-

roads of a global market connecting to Latin America and the Pacific rim. With advanced programs in energy conservation, electric vehicles, alternative fuels, and environmentally affordable ways to supply water and power, SRP is ready to help its customers assume even stronger economic leadership in the 21st century. SRP's vision has helped shape the West for 90 years. Its vision clearly will continue to shape Arizona's future.

A TRIBUTE TO DUKE AND EVELYN HILL

HON. JERRY LEWIS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 22, 1993

Mr. LEWIS of California. Mr. Speaker, I would like to bring to your attention today the fine work and inspired leadership of Edward Gould Hill, Jr. ("Duke") and Evelyn Hill who have taken leadership roles in fostering music for the cultural benefit of California's Inland Empire. The Hill's will be recognized for their long-time commitment to the Inland Empire Symphony later this week as they are presented with the 1993 Golden Baton Award in San Bernardino, CA.

The Inland Empire Symphony Orchestra is a 31-year-old organization which offers a diverse musical program each year. The 72-member orchestra, which serves 6 performing arts groups, also has a strong student music appreciation program which brings members of the orchestra to local schools.

Duke's father was concert pianist and music teacher in the Chicago area, and his mother operated Hill's Music and Book Store before the family moved to California some years later. Evelyn is a fifth generation San Bernardino resident, a descendant of Jerusha Gurnsey Bemis who settled in San Bernardino with the Mormon train in 1854. Duke and Evelyn met at San Bernardino Valley College and were married in 1951. Since that time, they have been blessed with three children, Edward, Claudia, and Alison.

In 1970, Duke became the sole proprietor of his real estate appraisal, public acquisition, and private investment business. In addition, he has taught real estate courses at San Bernardino Valley College and the University of California at Riverside. He is also a member of the Inland Empire Symphony Executive Board. Evelyn has served as president and a 19-year board member of the Assistance League of San Bernardino and president of the San Bernardino National Charity League. In addition, she was the founding president of the Inland Empire Symphony Guild, has served as the public relations chairman of the Inland Empire Symphony Orchestra for 4 years, and has served as a docent for the "Music in the Schools" Program since its inception. She has also served on the benefit committee and chaired or cochaired numerous event since first becoming involved with the Inland Empire Symphony Orchestra.

Mr. Speaker, I ask that you join me, our colleagues and friends in honoring Duke and Evelyn for all they have done to revitalize the Inland Empire Symphony which has become a solid part of San Bernardino's cultural heritage. Their dedicated and selfless service to our community is certainly worthy of recognition by the House today.

IN HONOR OF YOLANDA RUIZ ON HER RETIREMENT

HON. JULIAN C. DIXON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 22, 1993

Mr. DIXON. Mr. Speaker, I rise today to pay a special tribute to Yolanda O. Ruiz, who is retiring after 20 years of devoted service to the county of Los Angeles. The southern California congressional delegation also joins me in saluting Ms. Ruiz who has effectively served as the county of Los Angeles' legislative liaison in Washington, DC.

Over the years, Yolanda has represented the views and concerns of the county of Los Angeles Board of Supervisors. She has clearly earned the respect and admiration of those of us in Congress who have had the pleasure of working with her.

Ms. Ruiz is a versatile, competent, and well-respected individual who overcame enormous social odds. She was born in El Paso, TX, and grew up in the barrios of east Los Angeles, with three brothers and three sisters. Her mother was a seamstress in a sweat shop in the garment industry in Los Angeles and her father barely earned minimum wages as a laborer on the railroad.

Yolanda held numerous jobs to pay for her college education. She married Carlos Ruiz and together they raised seven sons—Daniel, Donald, Carols, Richard, Anthony, Michael, and Nicholas. In 1971, Ms. Ruiz began an illustrious career with the county of Los Angeles when she, her husband, and their children moved to Washington, DC.

In addition to working for the county and raising her family, Yolanda has been actively involved in the PTA, Little League, the Red Cross, her homeowners association, voter registration drives, community assistance for Spanish-speaking persons, and a variety of civic and social organizations. Most of us are familiar with Yolanda's unfailing support of the California State Society as a past president, vice president, and presently, the society's treasurer. In an age when our young men and women are desperately seeking role models to help guide and direct their lives, individuals like Yolanda Ruiz stand out as a living testimony that hard work and dedicated service reaps a positive goal.

Mr. Speaker, we will miss Yolanda as she retires from the county of Los Angeles. However, we are pleased that we had the pleasure of knowing and working with such a gracious, dedicated individual. She has completed a remarkable career in public service. My colleagues and I wish her continued success in her future endeavors.

NASHVILLE-BASED NORTHERN TELECOM RECEIVES IRS AWARD

HON. BOB CLEMENT

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Monday, February 22, 1993

Mr. CLEMENT. Mr. Speaker, it is my pleasure to pay tribute to a fine corporate constituent which has helped to dispel the perception of a traditional adversarial relationship between business and government.

Northern Telecom, Inc., which is based in Nashville, TN, recently received the Nation's first Joint IRS Taxpayer Quality Improvement Initiative Award for extraordinary commitment toward improving tax administration. In presenting the award to Martin Mand, executive vice president and chief financial officer for the company, IRS district director Glenn Cagle said,

> The Northern Telecom-IRS team represents the first time in the Nation, or possibly anywhere, that representatives from a company under audit have worked side by side with the examiners to improve key aspects of the audit process.

He added that the nationwide application of what the IRS and Northern Telecom achieved in Nashville can save untold hours and tax dollars in similar examinations.

The award recognizes the fruits of a year-long project that has led to substantial improvements in communications and information flow between the two organizations and is part of the IRS' quality improvement process [QIP], a formal program begun in 1987 to improve internal systems. New operations implemented as a result of the alliance have led to a 59-percent reduction in the average processing time for tax information requests at Northern Telecom. Other benefits include a more current examination procedure, reduced auditing burden, and the establishment of a foundation for further joint quality initiatives.

The project focused primarily on factors hindering information delivery, such as resource management, quantity of information requested, and the clarity of requests. The partnership has been so successful that the IRS Nashville district intends to use the project's process as a model for other districts.

Northern Telecom is a leading supplier of digital switching systems to the U.S. telephone industry, digital communications systems to the U.S. military, and is a major exporter of telecommunications equipment. It is the leading global supplier of fully digital telecommunications systems, with over 58,000 employees worldwide and annual revenues of $8.4 billion. In the United States, there are over 22,000 employees, including about 800 at NTI's Nashville headquarters, involved in design, manufacturing, and sale of telecommunications products.

I extend my heartfelt congratulations to all of the employees and executives at Northern Telecom on their receipt of this award.

IN RECOGNITION OF THE 90TH ANNIVERSARY OF THE SALT RIVER PROJECT

HON. JIM KOLBE

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Monday, February 22, 1993

Mr. KOLBE. Mr. Speaker, one of the more inspired city names in this great country is that of Phoenix, AZ. The phoenix, a bird of ancient Egyptian mythology, is said to have burned itself to ashes on a pyre, only to rise from those ashes to live again. Like the legendary bird, its urban namesake came to prosper only after death and resurrection. A principal agent of the city's rebirth was the Salt River project, the Nation's oldest multipurpose reclamation project. I rise to pay tribute to SRP, which proudly celebrates its 90th anniversary this month.

The site of present-day Phoenix was first inhabited by the Hohokam Indians, who disappeared from the Salt River Valley in central Arizona during the late 15th century. They left behind many artifacts to remind us of their presence but few clues to explain their sudden disappearance. One theory holds that the Hohokam, an agrarian society, was victimized by the uncontrollable drought-flood cycles that characterize many desert communities.

It was not until the late 19th century that hearty pioneers attempted to resettle the desert reaches of the Salt River Valley. Recognizing that effective settlement would be impossible without a reliable supply of water, a group of far-sighted and courageous individuals began planning a system of dams and canals to bring water—and life—to the Valley of the Sun. Such a system would be capable of distributing water in times of drought and conserving it in times of plenty.

Under the terms of the Reclamation Act of 1902, the Salt River Valley Water Users Association was incorporated on February 9, 1903. Guided by the spirit of risk which led them to Arizona in the first place, the incorporators pledged their lands as collateral for the construction of a Federal dam and water delivery system to store and distribute waters of the temperamental Salt River. Roosevelt Dam, which upon its completion in 1911, was the highest masonry dam in the world, was built at a cost of 30 lives and $10.3 million. When President Teddy Roosevelt traveled west to dedicate the dam that was to bear his name, the dream of reclamation was becoming a reality for the intrepid pioneers of the Salt River Valley.

From its modest beginnings, the Salt River project—which now includes the Salt River Valley Water Users Association and the Salt River Agricultural and Improvement District—has matured into an extensive and multifaceted enterprise. As the third-largest public power company in the Nation, and the largest water supplier in the State of Arizona, SRP currently serves more than 560,000 business and residential customers in central Arizona. It has established itself as the low-cost provider of quality water and power services in the Salt River Valley and has been a national leader in the development of energy efficiency and water conservation technologies.

Mr. Speaker, I am proud to salute the men and women of the Salt River project on the occasion of the project's 90th anniversary. I wish them every continued success as they continue to chart the course for a bright and promising future in the Valley of the Sun.

THE CLOSE-UP FOUNDATION'S HONORING OF BILL GRETZINGER AND MIKE MCCAULEY

HON. WILLIAM D. FORD

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Monday, February 22, 1993

Mr. FORD of Michigan. Mr. Speaker, I rise today to commend two dedicated teachers, Bill Gretzinger who teaches at Plymouth Salem High School in Salem, MI and Mike McCauley, who teaches at Plymouth-Canton High School in Canton, MI. They have both won the Close-Up Foundation's Linda Myers Chosen Award for Teaching Excellence in Civic Education.

The Close-Up Foundation provides students across the Nation the opportunity to learn about their Government first hand. Close-Up brings civics students to Washington to learn about Government, to meet with Government officials, and with Members of Congress and our staffs. I, along with many of my colleagues, have met with students on the Close-Up program. We have helped teach students about the Congress and the Federal Government; the students have helped us learn the concerns of the young people in our districts. To the new Members of Congress, I highly recommend active participation with the Close-Up Foundation.

The Close-Up Foundation chose Mr. Gretzinger and Mr. McCauley because they demonstrated outstanding leadership, innovation, and commitment to the Close-Up Foundation's citizenship education mission. Teaching citizens, young and old, about their Government and about their civic rights and responsibilities is a valuable mission.

Both teachers have worked hard to accomplish this mission. Their two schools are the two largest participants in the Close-Up program. Besides bringing over 1,500 students to Washington through the Close-Up Foundation, they have worked on the Classroom on Wheels, a program to teach students about city, county, and State government. By teaching active participation in their governments and getting students involved in the political process, they have taught students how to work to better their own future.

Students learn in many different ways. Textbooks and lectures are only two ways. Mr. Gretzinger and Mr. McCauley worked hard to expand their students' learning experience both in and outside of the classroom. They have given their students an unrivaled learning experience. Their students have learned through experience the workings of democracy.

Mr. Gretzinger and Mr. McCauley know that one learns best by doing. Thus, they inspired their students to actively participate in their own community. Students have started voter registration drives, assisted senior citizens, and have helped clean up the Rouge River.

I have worked with both teachers in Washington and in Michigan. I know of no higher praise than to say that their students are better off for having had them as teachers and that their communities are better off for having them teach there.

I have long been proud of Michigan's education community. Mr. Gretzinger's and Mr. McCauley's inspirational work for their students reminds me why.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, February 23, 1993, may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

FEBRUARY 24

9:30 a.m.

Commerce, Science, and Transportation

To hold hearings on S. 4, to promote the industrial competitiveness and economic growth of the U.S. by strengthening and expanding the civilian technology programs of the Department of Commerce.

SR-253

Energy and Natural Resources

To hold oversight hearings on energy tax options.

SH-216

Governmental Affairs

To hold hearings to examine proliferation threats of the 1990's.

SD-342

Special on Aging

To hold hearings to examine the Federal Government's role in the research and development of new pharmaceutical products in the U.S., focusing on AIDS and cancer drug treatments.

SD-G50

10:00 a.m.

Appropriations

Legislative Branch Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1994 for the Legislative Branch, focusing on the Capitol Police Board and the Architect of the Capitol.

SD-116

Appropriations

Treasury, Postal Service, General Government Subcommittee

To hold hearings on proposed budget estimates for fiscal year 1994 for the De-

partment of State, Department of Defense, U.S. Customs Service, General Accounting Office, Drug Enforcement Administration, and the U.S. Border Patrol.
SD–192

Banking, Housing, and Urban Affairs
To hold hearings to examine mortgage and other lending discrimination.
SD–562

Budget
To resume hearings to examine the President's economic plan.
SD–608

Labor and Human Resources
To hold hearings to examine American education standards and goals for the future.
SD–430

2:00 p.m.
Armed Services
To hold hearings on the status of United States Government assistance to the former Soviet Union.
SR–222

FEBRUARY 25

9:30 a.m.
Energy and Natural Resources
To hold hearings on S. 338, to revise the Petroleum Marketing Practices Act to clarify the Federal standards governing the termination and nonrenewal of franchises and franchise relationships for the sale of motor fuel.
SD–366

Veterans' Affairs
To hold joint hearings with the House Committee on Veterans Affairs to review the legislative recommendations of the Paralyzed Veterans of America, the Blinded Veterans of America, the Military Order of the Purple Heart, the Jewish War Veterans, and the Retired Officers Association.
345 Cannon Building

10:00 a.m.
Appropriations
Legislative Branch Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1994 for the Legislative Branch, focusing on the Library of Congress and the Government Printing Office.
SD–116

Finance
To hold hearings on U.S. trade policy issues.
Room to be announced

Governmental Affairs
Business meeting, to consider pending calendar business.
SD–342

Small Business
To hold oversight hearings on the Small Business Administration's microloan demonstration program.
SR–428A

Joint Organization of Congress
To resume hearings to examine congressional reform proposals, focusing on procedures for enforcing ethical standards.
S–5, Capitol

2:00 p.m.
Energy and Natural Resources
Public Lands, National Parks and Forests Subcommittee
To hold hearings on S. 206, to designate certain lands in the State of Colorado as components of the National Wilderness Preservation System, and S. 341, to provide for a land exchange between the Secretary of Agriculture and Eagle and Pitkin Counties in Colorado.
SD–366

FEBRUARY 26

10:00 a.m.
Appropriations
Legislative Branch Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1994 for the Legislative Branch, focusing on the Joint Committee on Printing and the General Accounting Office.
SD–116

MARCH 2

9:30 a.m.
Governmental Affairs
To hold hearings on S. 185, to restore to Federal civilian employees their right to participate voluntarily, as private citizens, in the political processes of the nation, to protect such employees from improper political solicitations.
SD–342

Veterans' Affairs
To hold joint hearings with the House Committee on Veterans Affairs to review the legislative recommendations of the Veterans of Foreign Wars.
345 Cannon Building

10:00 a.m.
Appropriations
Commerce, Justice, State, and Judiciary Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1994 for the Judiciary.
S–146, Capitol

2:30 p.m.
Appropriations
Foreign Operations Subcommittee
To resume hearings to examine issues and solutions for reforming foreign aid.
SD–192

MARCH 3

9:30 a.m.
Energy and Natural Resources
Business meeting, to consider pending calendar business.
SD–366

Rules and Administration
To hold hearings on S. 3, S. 7, S. 62, S. 87, and S. 94, Congressional election campaign finance reform proposals.
SR–301

MARCH 4

9:30 a.m.
Rules and Administration
To continue hearings on S. 3, S. 7, S. 62, S. 87, and S. 94, Congressional election campaign finance reform proposals.
SR–301

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1994 for the Federal Railroad Administration, and the National Railroad Passenger Corporation (AMTRAK), focusing on high-speed rail.
SD–192

MARCH 5

10:30 a.m.
Veterans' Affairs
To hold oversight hearings on the present and future role of veterans' health care system.
SR–418

MARCH 9

10:00 a.m.
Appropriations
Foreign Operations Subcommittee
To hold hearings on reforming the Agency for International Development's structure and goals.
SD–192

MARCH 11

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1994 for the Federal Transit Administration, and the General Accounting Office, focusing on transit needs.
SD–138

MARCH 16

2:30 p.m.
Appropriations
Foreign Operations Subcommittee
To hold hearings to examine the purposes of foreign aid in the post-cold war era.
SD–138

MARCH 17

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1994 for the National Transportation Safety Board.
SD–192

MARCH 18

9:00 a.m.
Rules and Administration
Business meeting, to mark up proposed legislation relating to Congressional election campaign finance reform.
SR–301

MARCH 23

10:00 a.m.
Appropriations
Foreign Operations Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1994 for foreign assistance.
SD–192

MARCH 24

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1994 for the Department of Transportation.
SD–116

MARCH 30

2:30 p.m.
Appropriations
Foreign Operations Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1994 for foreign assistance, focusing on multilateral assistance funding and policy issues.
SD–138

MARCH 31

9:30 a.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans' Affairs to review the legislative recommendations of AMVETS, the Veterans of World War I, the Vietnam Veterans of Amer-

ica, the American Ex-Prisoners of War, and the Non-Commissioned Officers Association.

345 Cannon Building

APRIL 1

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1994 for the Federal Highway Administration, focusing on implementation of the Intermodal Surface Transportation Efficiency Act.

SD–116

APRIL 20

2:30 p.m.
Appropriations
Foreign Operations Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1994 for foreign assistance, focusing on sustainable development goals and strategies.

SD–138

APRIL 21

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1994 for the Office of Motor Carriers (FHWA), the Office of Research and Special Programs, and the Office of Inspector General, focusing on truck safety and hazardous materials.

SD–192

APRIL 27

2:30 p.m.
Appropriations
Foreign Operations Subcommittee
To hold hearings to examine foreign aid transnational issues, focusing on population, environment, health, and narcotics.

SD–138

MAY 4

2:30 p.m.
Appropriations
Foreign Operations Subcommittee
To hold hearings to examine foreign assistance and U.S. international economic interests.

SD–138

MAY 6

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1994 for the Federal Aviation Administration, focusing on procurement reform.

SD–138

MAY 11

2:30 p.m.
Appropriations
Foreign Operations Subcommittee
To hold hearings to examine foreign assistance and U.S. foreign policy and security interests.

SD–138

MAY 13

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1994 for the U.S. Coast Guard, focusing on marine safety.

SD–138

MAY 25

2:30 p.m.
Appropriations
Foreign Operations Subcommittee
To hold hearings on foreign assistance and the transition to democracy in the former Soviet Union and eastern Europe.

SD–138

MAY 27

10:00 a.m.
Appropriations
Transportation Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1994 for the National Highway Traffic Safety Administration, focusing on drunk driving.

SD–138

JUNE 8

10:00 a.m.
Appropriations
Foreign Operations Subcommittee
To hold hearings on proposed budget estimates for fiscal year 1994 for foreign assistance.

SD–138